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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1083.

J. W. JEFFERSON, TRUSTEE, J. T. JEFFERSON ET AL., APPELLANTS,

vs.

JOHN B. DRIVER, ADMINISTRATOR *DE BONIS NON* OF JAMES H. EDRINGTON, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED OCTOBER 13, 1885.

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a United States Circuit Court, Eastern District of Arkansas.

Be it remembered that on the — day of April, 1885, came into the office of the clerk of the circuit of the United States for the eastern district of Arkansas J. W. Jefferson, trustee, *et als.*, by Myers and Sneed, Esq's, their solicitors, and filed therein on the chancery side of said court their transcript in case of John B. Driver, as administrator of James H. Edrington, deceased, against them, which transcript is in words and figures following, to wit:

1 In Mississippi Circuit Court.

NANCY A. EDRINGTON, as Extr'x of James H. Edrington, Deceased,
against
J. W. JEFFERSON, J. T. JEFFERSON, G. W. L. CROOK, JOHN MATthews, and Emily R. Hazard, and John H. Hazard, as Adm'rs of James H. Hazard, Deceased.

The plaintiff, Nancy A. Edrington, as executrix of James H. Edrington, deceased, states that her testator departed this life in the city of Memphis, Tennessee, on the 12th day of August, 1874, leaving surviving him his widow, the said Nancy A., and his children, Bard, James, Sallie, John, Joseph, Eugenia, Rena, and Nancy, all minors; and a last will and testament, in which he named the said Nancy A. his executrix, and which said will has been duly probated in the said county of Mississippi and State of Arkansas, and the said Nancy was duly qualified as executrix, and is now acting as such, all of which will more fully and at large appear from a transcript of said will and the probate thereof, and a copy of the letters testamentary issued thereunder, herewith made a part of this complaint, marked Exhibit "A;" that for some time before his death the said James H. Edrington had been engaged in business in the city of Memphis with the said defendant, J. T. Jefferson, under the name and style of Jefferson and Edrington, as grocery and commission merchants, commencing about the 1st day of February, 1872; that for some fifteen months before his death, the said James H. became, and was, effected with a painful bodily disease, which finally terminated in his death, and which in its progress became so distressing as to incapacitate him more and more for business, until for the last five or six months before his death he became and was the victim of the most excruciating bodily pains
2 from which he only found relief in opiates, and which prevented his having clear and concentrated ideas for the transaction of business. That during this time the said defendant, J. T. Jefferson had the sole and entire control of the business of the partnership, save only what a man in Edrington's condition could give or take, and which really amounted to nothing. That during said time the said J. T. Jefferson managed said business for his own profit and emolument, to a great extent disregarding the interests of said Edrington, and fraudulently converting the assets of said partnership to his own use. That as the said Edrington became weaker and more incapacitated for business the said J.

T. Jefferson became more grasping in his designs on the partnership assets, and finally, by a persistent course of worrying and annoyance, he procured the execution of a deed of trust upon two certain plantations in Mississippi county, Arkansas, one known as the Whitmore place, and described as the southwest q'r of section 30, in township 13 north, of range 11 east; the south half of section 25; the south half of section 26, and the southwest q'r of section 34, in township 13 north, of range 10 east, containing 902 acres of land; and the Fain place, described as the north half of section 36, in township 13 north, of range 10 east; the southwest q'r of section 3, in township 12 north, of range 10 east, and the northwest q'r of section 31, in township 13 north, of range 11 east, containing 800 acres of land, to secure a certain portion of the indebtedness of the firm of Jefferson and Edrington, described in a schedule accompanying said deed of trust, and in which the defendant, J. W. Jefferson was appointed trustee with power to sell said lands upon breach of the conditions in the deed, as will more fully appear from a transcript of the record of said
3 deed of trust herewith filed and made part of this complaint, marked Exhibit "B"; that at the time of the execution of the said deed of trust the said J. T. Jefferson bound himself to said J. H. Edrington by an agreement, a copy of which is herewith filed and made part of this complaint, marked Exhibit "C," to pay or secure all the remainder of the indebtedness of the said firm of Jefferson and Edrington, and to hold the said James H. Edrington harmless in regard thereto; that at the same time the said J. T. Jefferson entered into bond to said James H. Edrington, with one J. J. Busby as his security, in the sum of ———, for the faithful performance of the stipulations of his contract, as will more fully appear from a copy of said bond herewith filed and made part of this complaint, marked Exhibit "D"; that the said J. W. Jefferson, as trustee, has advertised said property for sale, under the provisions of said deed of trust, on Thursday, the 21st day of January, 1875, in front of the clerk's office, in the town of Osceola, in said county of Mississippi, as will more fully appear from a copy of the "Memphis Daily Appeal," containing said advertisement, herewith filed and made part of this complaint, marked Exhibit "E."

Plaintiff states that there is an encumbrance of prior date to the said deed of trust on the Whitmore place in the shape of a mortgage to secure the sum of about $8,000.00, as will more fully appear from a transcript of said record of said mortgage, to one James H. Hazard, herewith filed and made a part of this complaint, marked Exhibit "F;" that there is an incumbrance of about $12,000.00 upon the Fain place prior to Exhibit "B," being for the unpaid purchase-money, and due to one John Matthews as assignee of Mrs. Penelope Fizer, for herself, and as guardian of Georgia B. McCauley and
4 Samuel B. Macauley.

Plaintiff states that at the time of the execution of said Exhibit "B" the firm of Jefferson and Edrington had in goods and groceries in their store-house in Memphis the value of about eighteen thousand dollars, at cash prices, and that their mercantile assets con-

sisting of notes, bills, and accounts, due and owing by sundry persons, amounted to about forty thousand dollars. That since that time the said J. T. Jefferson has had the sole and entire control of said assets, and has reduced them to possession, without rendering an account thereof to any person, so far as plaintiff is informed and believes. That the said J. T. Jefferson has neither paid nor secured any part of the indebtedness assumed by him by virtue of his said agreement, Exhibit "C." That he has converted the assets aforesaid to his own use. That he is the active and busy party in seeking the enforcement of the deed of trust, Exhibit "B." That the general creditors secured by the deed of trust are not pushing or requiring its execution. But the chief mover in the matter is the said J. T. Jefferson. That the said executrix has had the whole business of her testator, including the planting operations upon all of his plantations, successfully carried on since his death, and has made, notwithstanding the late disastrous season, and the making of only one-half a crop, about eight hundred bales of cotton during the past season, at least four hundred of which is assets of the estate. And her arrangements for the ensuing year are such that, if not disturbed in the possession of the two plantations, she will be enabled to make for the estate at least twelve hundred bales of cotton, or nearly, if not quite, enough to pay off one-half the entire indebtedness of the estate, whereas the loss of those plantations
5 would reduce said quantity to about six hundred bales. That a forced sale of said plantations, at the present time, for cash, subject to the prior encumbrances hereinbefore set out, would be ruinious to the general estate, as well as to the creditors preferred in said deed of trust, for the reason that the said plantation could not be expected to realize any considerable sum over and above said incumbrances. That the said J. W. Jefferson, the said trustee, is entirely irresponsible, has given no security, is not the agent or representative of any considerable number of creditors preferred, is not a resident of the State of Arkansas, and would remove the proceeds beyond the jurisdiction of the courts of the State. That the debts secured by said deed of trust are now being prorated against the estate, the creditors not looking to the deed of trust as their security. That the entire course of J. T. Jefferson since the execution of said deed of trust evinces a disposition on his part to shift the entire responsibility for the debts of Jefferson & Edrington from his own shoulders, even to the destruction of the estate. That the suretyship of the said J. J. Busby amounts to nothing, he being a non-resident and insolvent. That before J. T. Jefferson takes or is allowed to take any steps against the estate, in the State of Arkansas, he ought to be required to settle up the partnership, and account for the assets that have passed into his hands. That the said James H. Hazard, after the making of the mortgage to him on the Whitmore place, departed this life in the State of Arkansas, intestate, leaving surviving him his widow, one Emily R. Hazard, and his son and only heir at law, John H. Hazard, both of whom, together, administered on his estate in the said county of Mississippi.

6 Plaintiff states that, with the encumbrances upon the Whitmore and Fain places, they could not be expected to realize more than $1,000.00 at the trust sale, which would be less than 25 per cent. of the $42,252.53 of indebtedness mentioned in the schedule, and 35 per cent. of the sum secured by the deed of trust, while double that sum may reasonably be expected to be raised from the cultivation of said places by the plaintiff for the ensuing year, the probate court of Mississippi County having made an order directing the plantations of the estate to be worked during the year 1875, with the necessary personal property belonging to the estate.

Plaintiff further states that while making the deed of trust by the said Edrington, to secure part of the creditors of the firm of Jefferson and Edrington, was a legitimate transaction between the said J. T. Jefferson and the said Edrington, if the agreement exhibit "C" had been carried out in good faith by the said Jefferson, yet his failure to do so, and throwing the whole responsibility of the indebtedness upon the estate of said Edrington, makes the said deed of trust operate as a fraud upon the creditors of Jefferson and Edrington not secured thereby, and renders the same null and void for the fraud aforesaid; that the said J. T. Jefferson is insolvent and a non-resident of the State of Arkansas.

Plaintiff states that her testator had only an equitable title, or title bond, from Penelope Fizer, S. B. McCauley, and Penelope Fizer as guardian of Georgia B. McCauley, for the said Fain place, as will appear by the original bond for title herewith filed as exhibit "H."

Wherefore the prayer of the plaintiff is that the said defendants, J. T. Jefferson, J. W. Jefferson, G. W. L. Crook; John
7 Matthews and Emily R. Hazard and John H. Hazard, as administrator of James H. Hazard, deceased, answer all and singular the allegations of this complaint, as if repeated in the form of special interrogatories; that the sale of said lands be enjoined; that the said J. T. Jefferson be required to produce the books of Jefferson and Edrington in this court, with a balance sheet showing the condition of the firm of Jefferson and Edrington; that the same be referred to a master, to take an account between the surviving partner and the estate, and that said surviving partner be required to account particularly for the eighteen thousand dollars of goods on hand at the execution of the deed of trust, and the forty thousand dollars of mercantile assets, together with all proper relief.

JOHN C. PALMER,
For Plaintiff.

I, Nancy A. Edrington, being duly sworn, state on oath that I believe the statements of the complaint are true, and that defendants, J. W. Jefferson, J. T. Jefferson, and G. W. L. Crook are non-residents.

NANCY A. EDRINGTON.

Subscribed and sworn to before me this 8th day of December, 1874.

L. M. CARRIGAN,
Probate Judge.

STATE OF ARKANSAS, *County of Mississippi:*

Now, on this 8th day of December, 1874, the within and foregoing bill being presented to me, and the same having been considered, and the prayer thereof, being granted, the clerk of the circuit
8 court of said county is hereby directed to issue an order of injunction to the within-named J. W. Jefferson, commanding and enjoining him to restrain from seeking to enforce the deed of trust executed by James H. Edrington to said J. W. Jefferson upon the Whitmore and Fain places in said county, when the plaintiff shall file before him a good and sufficient bond in the sum of six thousand dollars, with security, to be approved by him.

Given under my hand as judge of the probate court of said county, the day above written.

L. M. CARRIGAN,
Probate Judge.

Filed December 11th, 1874.

J. K. P. HALE, *Clerk,*
By J. O. BLACKWOOD, *D. C.*

9 *Order of Injunction.*

In Mississippi Circuit Court.

NANCY A. EDRINGTON, as Executrix of James H. Edrington, Dec's'd, Plaintiff,
against
J. T. JEFFERSON, J. W. JEFFERSON, G. W. L. CROOK, JOHN MATTHEWS and EMILY R. HAZARD, and JOHN H. HAZARD, as Administrators of James H. Hazard, Deceased, Defendants.

The State of Arkansas to J. W. Jefferson:

You are enjoined from proceeding to sell the Whitmore place, in Mississippi county, Arkansas, described as the southwest quarter of section 30, in township 13 north, of range 11 east; the south half of section 25, the south half of section 26, and the southwest q'r of section 34, in township 13 north, of range 10 east; containing 902 acres of land. And the Fain place in said county, described as the north half of section 36, in township 13 north, of range 10 east; the southwest q'r of section 3, in township 12 north, of range 10 east; and the northwest fractional q'r of section 31, in township 13 north, of range 11 east; containing 800 acres of land, under the deed of trust from James H. Edrington to you, the said J. W. Jefferson, until the further order of this court.

Witness my hand and the seal of said court this 12th day of December, 1874.

[SEAL.]

J. K. P. HALE, *Clerk,*
By J. O. BLACKFORD, *D. C.*

10 *Sheriff's Return.*

Duly executed by reading the within to all the within-named

parties, except J. W. Jefferson, and delivered a true copy to him by registered letter, which I now have receipt for.

J. B. DRIVER, *Sheriff.*

Fees:	Services	$3 00
	Mileage, postage, & return	4 50
		$7 50

11 *Amended Complaint (No. 1).*

In Mississippi Circuit Court.

N. A. EDRINGTON as Ex'tr'x, Plaintiff,

vs.

J. T. JEFFERSON *et als.*, Defendants.

Amendment to complaint.

Plaintiff states by way of amendment, and in lieu of that part of the complaint relating to Exhibit "D" & "C," that by the terms of the agreement between James H. Edrington and J. T. Jefferson, which culminated in the execution of Exhibit "B," the said J. H. Edrington was to give acceptances instead of a deed of trust; but from his confinement to a bed of sickness he was unable to get out into the city of Memphis and make the necessary arrangements, whereupon, as the alternative, he executed the trust deed, and the said J. T. Jefferson was to give a trust deed upon property to the amount of the Washington Insurance Company debt, and also an indemnity bond to J. H. Edrington to pay all indebtedness of Jefferson & Edrington, as will fully appear from the pencil copy of a memorandum found in the papers of James H. Edrington after his death, herewith filed and made part of this amended complaint, marked Exhibit "C;" that said James H. Edrington fully complied with his part of the agreement, as appears from Exhibit "B," but the said J. T. Jefferson has wholly failed to and refused to execute the deed of trust mentioned in said pencil memorandum, and has wholly
12 refused and neglected to give the indemnity bond therein mentioned, and up to this time has wholly failed and refused to protect, pay off, or secure any part of the indebtness of Jefferson & Edrington, but is using all his power and influence to enforce the deed of trust, Exhibit "B." The plaintiff files herewith, as part of this complaint, Exhibit "D," a copy of balance sheet in the handwriting of the book-keeper of Jefferson & Edrington, also found among the papers of Mr. J. H. Edrington after his death, showing the liabilities and assets of the firm, and clearly showing the fraud practiced and sought to be practiced upon J. H. Edrington by said J. T. Jefferson in the lifetime of said J. H. E., and now sought to be practiced against his estate.

JOHN C. PALMER,
For Plaintiff.

I, N. A. Edrington, state that I believe the contents of the foregoing amended complaint are true.

Subscribed and sworn to before me, this — day of December, 1874.

Filed December 22nd, 1874.

J. K. P. HALE, *Clerk*,
By J. O. BLACKWOOD, *D. C.*

EXHIBIT "C" to Amended Complaint.

J. H. Edrington to give acceptance for $13,000, payable Nov., 1874, 15 January, March, May, 1875. Trust deed on Fain place of $11,500.00, to secure the prompt payment of the above, with the acceptance of $5,000.00, due in November, 1875.

J. T. Jefferson to give a trust deed upon property to the amount of the Washington debt, also an indemnity bond to J. H. E.
13 to pay all indebtedness of Jefferson & Edrington. In case of failure of J. H. E. to give acceptance, E. is *is* to give trust deed upon property ample to secure the debts due J. & E. by C. H. Gaylord and J. H. E. & Co.

Copy. Filed December 22nd, 1874.

J. K. P. HALE, *Clerk*,
By J. O. BLACKWOOD, *D. C.*

EXHIBIT "D" to Amended Complaint.

Assets:	
Ledger balances due us	61,452 34
Bills receivable acc't	3,452 56
Insurance stock & bank stock acc't	11,968 33
J. H. Edrington & Co.	13,127 56
J. H. Edrington acc't	13,126 15
Merchandise stock on hand	18,054 26
	121,181 20
Liabilities:	
Ledger balances due others	16,762 50
Bills payable acct	54,105 22
State National Bank, overcheck	629 67
J. T. Jefferson acc't	4,632 31
Assets in excess of liabilities	45,041 50
	$121,181 20

Assets in excess of liabilities, $45,051.50

14 *Amended Complaint, No. 2.*

In Mississippi Circuit Court.

NANCY A. EDRINGTON, as Ex'tr'x, Plaintiff,
against
J. W. JEFFERSON *et als.*, Defendants.

Amendment to complaint.

Nancy A. Edrington, as executrix, as aforesaid, the plaintiff, comes

and states, by way of amendment to her original complaint in this cause, that since the filing of the amendment in December, 1874, she has discovered among the papers of her testator a bond of indemnity executed by the said J. T. Jefferson, with the said J. W. Jefferson as security, to the said James H. Edrington, and bearing date on the 20th day of March, 1874, the recitals of which show the terms of the agreement between Jefferson & Edrington of that date and the circumstances and considerations of the deed of trust before herein set out, which is asked to be taken and considered as part of this complaint, a copy of which is hereto annexed, marked Exhibit "Y," and the original of which is held subject to the order of the court, and will be produced at the hearing.

Plaintiff states that the security on the bond is not sufficient to secure the performance of the conditions thereof, and in reality amounts to no security at all.

Plaintiff prays the relief asked in her original complaint.

JOHN C. PALMER,
For Plaintiff.

I, N. A. Edrington, being duly sworn, state that I believe the statements of the foregoing amendments are true.

N. A. EDRINGTON.

Subscribed and sworn to before me this 14th day of Jan., 1875.

J. K. P. HALE, *Clerk*,
By J. O. BLACKWOOD, *D. C.*

15 EXHIBIT "Y" to Amended Complaint, No. 2.

Whereas the mercantile partnership heretofore existing in the city of Memphis, Tenn., between J. T. Jefferson and J. H. Edrington, under the name and style of Jefferson & Edrington, has been dissolved by mutual consent on this, the 20th day of March, 1874, and it was and is agreed between them that said Jefferson shall retain and own all the partnership assets, including stock on hand, notes, accounts, and all other things pertaining to their firm business, and is to assume and pay off the partnership liabilities of every kind, and save the said Edrington harmless in the premises: Now, therefore, this agreement witnesseth: That for and in consideration of the said surrender and relinquishment on the part of said Edrington of all right, title, and interest in and to said partnership assets, we, the undersigned, jointly and severally, undertake and bind ourselves that the said Jefferson shall pay off and discharge all of said firm liabilities, of every kind, and that we will indemnify and save harmless the said Edrington against any and all loss, injury, or damage arising therefrom, and will promptly reimburse and refund to him any moneys that he may be required to pay out, by legal process or otherwise, in consequence of any indebtedness due by said firm.

In testimony whereof we have hereunto set our hands and seals, this 20th day of March, 1874.

J. T. JEFFERSON. [SEAL.]
JNO. W. JEFFERSON. [SEAL.]

Filed January 14th, 1875.

J. K. P. HALE, *Clerk*,
By J. O. BLACKWOOD, *Deputy*.

16 *Answer of J. W. Jefferson, Trustee.*

In the Circuit Court of Mississippi County, Arkansas.

NANCY A. EDRINGTON, as Executrix of James H. Edrington, Deceased, Plaintiff,

vs.

J. W. JEFFERSON, J. T. JEFFERSON, G. W. L. CROOK, JOHN MATTHEWS, and Emily Hazard, and John H. Hazard, Adm'rs of James H. Hazard, Deceased, Defendants.

The separate answer of John W. Jefferson to the bill in the above-named cause and the amendments thereto.

Respondent, answering, says that he admits the death of James H. Edrington; that the plaintiff is his widow, and that he left the children named in the bill, and that said children are all minors. He also admits that said Edrington left a will, in which plaintiff was named executrix, and the probate of said will and the qualification of plaintiff as executrix thereof.

Respondent also admits that said Edrington for some time before his death had been engaged in business in Memphis, Tennessee, with respondent's codefendant, J. T. Jefferson, as grocery and commission merchants, under the style of Jefferson & Edrington, and he supposes the partnership began about the time stated in the bill.

Respondent also admits the illness of said Edrington for some time before his death, but respondent knew very little of his illness. On information and belief, however, respondent denies that his sickness prevented him from having correct ideas of his business.

17 Repondent knows that he well understood the transactions connected with the execution of the deed of trust to respondent, but he will answer more fully as to this hereafter.

Respondent does not know whether J. T. Jefferson had the sole management of the business of Jefferson & Edrington during the sickness of Edrington or not; hence he cannot answer that charge of the bill. But respondent is fully advised as to the making of the deed of trust, and he knows that it was not made at the instance and procurement of said J. T. Jefferson alone. He therefore denies emphatically and distinctly that charge of the bill. Said deed of trust was not executed at the instance and request of said J. T. Jefferson alone or through the procurement of said J. T. Jefferson, but was executed at the instance and request of the creditors of Jefferson & Edrington as well as at the request of said Jefferson.

After the failure of Jefferson & Edrington respondent became familiar with the business of that firm, and became also very familiar with all the negotiations between J. T. Jefferson and J. H. Edrington and the creditors of the firm, which led to the execution of the deed of trust. After the failure the creditors were very industrious to get said Edrington to secure a large debt of about $40,000.00 which he owed to the firm of Jefferson & Edrington.

Respondent knows from the balance sheet of Jefferson & Edrington, which he saw, and from admissions of said Edrington, which respondent heard him make, that he, Edrington, was largely indebted to the firm. At the time of the execution of the deed of trust said Edrington had reduced this indebtedness
18 to something over $28,000.00, as respondent then learned. The creditors of Jefferson & Edrington insisted that J. H. Edrington should secure this amount, they threatening to proceed against the firm, in bankruptcy, if this were not done. Edrington admitted the indebtedness, and expressed a desire to secure it, being anxious to avoid proceedings in bankruptcy, as he supposed such proceedings would ruin his prospects for farming that year, 1874. The first agreement with, or promise by, said Edrington to the creditors was to give a deed of trust on the Fain place mentioned in the bill and described in the deed of trust, and the acceptance of either Fargason & Clay, Brooks, Neely & Co., or Gage & Fisher, all merchants of Memphis, for the amounts to fall due, as set out in the deed of trust. Having failed to give the acceptances said Edrington then agreed to give, and did give, the deed of trust mentioned in the bill. And if it is meant to allege in the bill that said Edrington was incapacitated, mentally, to execute said deed of trust, or to properly understand and appreciate the negotiations connected therewith, respondent denies such allegation and charges most distinctly. That Edrington at the time of making the trust deed was in possession of all his faculties, exhibited the finest business capacity, and seemed thoroughly to understand and appreciate the entire transaction. Knowing his interest well, and doing everything to protect it, the plaintiff in this suit joined her husband, the said J. H. Edrington, in the execution of said deed of trust, as will appear from the paper itself. She does not state this fact in her bill, and respondent submits that it is somewhat remarkable that the plaintiff would join with her husband in such a paper if she knew
19 what she now asserts, that he was not in a proper state of mind to execute the deed. By joining with him without objection or protest respondent submits that she estopped herself from saying that he was not capable of making the deed.

Respondent admits that he was appointed trustee by said deed of trust, and that he accepted the trust. As to that part of the bill and amendments in reference to the obligation of said J. T. Jefferson to said Edrington to pay the remainder of the debts of Jefferson & Edrington and hold said Edrington harmless, respondent says that he is not required to answer, but these charges are to be answered by said J. T. Jefferson. But respondent will state that he knows that said J. T. Jefferson did give an indemnity bond, with this respond-

ent as security, a copy of which is Exhibit "Y" to the bill. This bond was accepted by the said Edrington; and respondent denies that said security is insufficient, and amounts to no security at all, as charged. And respondent also knows that said J. T. Jefferson, in connection with respondent, did give a deed of trust on property in and near Memphis, to secure the creditors of Jefferson & Edrington, which was accepted by said creditors. The deed of trust made by said J. H. Edrington to respondent, as trustee, was made to secure the indebtedness of said Edrington to the firm of Jefferson and Edrington; and while it would, of course, come to the benefit of the creditors of said firm, it was a security for Edrington's own debts, and not an individual assumption of, and security for, the debts of the firm.

Respondent knows nothing of a bond entered into by said J. T. Jefferson with J. J. Busby as security, and is informed that no such bond was ever executed. But the charge that said Busby is insolvent is entirely untrue, and shows the recklessness of the
20 charges in the bill. Said Busby is a man of large means and great credit.

Respondent admits that as trustee he advertised the land conveyed to him in trust by the deed for sale at the time and place and in the manner stated in the bill. He did this because the conditions upon which the sale should be made had then taken place, and the creditors of said Jefferson & Edrington requested and instructed him to do so. By the terms of the deed it is provided that respondent "may and shall" sell the property if the payments were not made as therein provided. The notes secured by the deed were made payable to respondent as trustee. Two of them fell due and were not paid, and the creditors among whom the proceeds of the notes were to be distributed directed a sale. Respondent thought then, and thinks now, that it was his duty to advertise; and he would have made the sale but for the injunction in this case.

Respondent knows nothing of an incumbrance on the Whitmore place conveyed in the deed of trust. No incumbrance is mentioned in the deed, but there is in it a covenant against incumbrances. Respondent demands proof of the incumbrance stated in the bill. As to the Fain place, respondent knows nothing of any incumbrance, except that for $5,000.00 mentioned in the deed, and he requires proof. But if such incumbrances really exist now, they, of course, existed when the deed was executed by said J. H. Edrington and the plaintiff, and were known to them, and hence respondent insists that plaintiff cannot resist a sale of the property on account of said incumbrances.

But respondent, on information and belief, states that said incumbrances, to the extent which they really exist, have been
21 paid off by the plaintiff or defendant, John Matthews, acting for her, with the assets of the estate of said J. H. Edrington, the proceeds of the crop of cotton of last year.

Respondent supposes that he is not called upon to answer that part of the bill in reference to the amount and value of the assets of Jefferson & Edrington at the date of the deed of trust. Of his own

knowledge, however, he states that J. T. Jefferson has secured the indebtedness of Jefferson & Edrington by deed of trust, as heretofore stated.

Respondent denies that said J. T. Jefferson "is the active and busy party" in seeking to enforce the deed of trust—Exhibit B to the bill. Respondent supposes he desires it enforced, but the creditors of Jefferson & Edrington directed its enforcement, and respondent's sense of duty caused him to take the proper steps for the sale. Respondent admits that he is the brother of said J. T. Jefferson. He was selected as a trustee by the creditors of Jefferson & Edrington, the real beneficiaries, and by said J. H. Edrington, and agreed to act. Respondent denies distinctly, unequivocally, and indignantly that he made a fraudulent combination with said J. T. Jefferson and G. W. L. Crook to procure the execution of the deed of trust by Edrington, or that he procured or attempted to procure it "to make a corner for his benefit," or that he had any interest whatever in having the deed executed, or used any influence to procure its execution. The charge is utterly false.

Respondent again denies that the creditors of Jefferson & Edrington did not direct a sale under the deed.

22 Respondent supposes that plaintiff has been managing the business of her testator since his death, and supposes the amount of cotton stated was made on the plantations. Respondent cannot very well conceive, however, why it is that the proceeds of the 400 bales of cotton were not applied to the payment of the note executed by him, as trustee, as they should have been. Had this been done no steps would have been taken to sell the land, and this litigation would have been unnecessary. Respondent can only account for the failure to apply this cotton to the payment of these debts by the fact, which he has heard, that it has been appropriated in discharge of incumbrances, now sought to be set up against the foreclosure of the trust.

Respondent knows nothing of the plaintiff's arrangements for planting during the present year. He insists that plaintiff can not stop the sale because the lands may not bring a high price. The contract was to sell in default of payment of the notes. Respondent denies that he is irresponsible. Admits that he has given no security—none has been required. Denies that he is not the agent or trustee of any considerable number of the creditors of Jefferson & Edrington. He admits that he is a non-resident of Arkansas, but he is a resident of Memphis, Tenn., where the said firm of Jefferson & Edrington did business—where said Edrington resided at the time of his death, and where a number of the creditors of said firm reside, and where the notes made to this respondent, as trustee, are payable. Memphis, Tennessee, is the place for the distribution of the proceeds of the sale, and is the place and the only place to which respondent would remove them.

Respondent does not know whether the debts secured by the deed of trust are being probated against the estate of Edrington or

23 not. He should not wonder at that if it be true, for certainly plaintiff's course in filing this bill would naturally

make them doubt the security of the deed of trust. But respondent does not believe that the creditors do not look to the deed of trust as security.

Respondent does not know and cannot state what amount the property would bring if sold. Plaintiff and her husband should have considered all this before making the deed.

Respondent knows nothing of the death of James H. Hazard, nor does he know who are the administrators of said Hazard.

Respondent knows nothing of the orders of the probate court of Mississippi county, but submits that the alleged order cannot affect this case.

Respondent says that the alleged failure of J. T. Jefferson to comply with the agreement, Exhibit "C," if there were, such failure could not affect the rights of the creditors of Jefferson & Edrington under the deed of trust, Exhibit "B," nor respondent's duties as trustee. But he states that said J. T. Jefferson did comply with said agreement by giving security satisfactory to the creditor.

Respondent knows nothing of the circular letter of the defendant, G. W. L. Crook, and never heard of it until he read this bill.

Respondent supposes that the fact that said J. H. Edrington had only an equitable estate in the Fain place can make no difference. He had the right to convey said equitable interest in trust, and the same may be sold.

And in answer to the first amendment, in so far as it has not already been answered, respondent admits that it is true as he
24 has already stated, that said J. H. Edrington did first agree to give city acceptances, as security, instead of the deed on the Whitmore place. It is untrue that Edrington was unable to get out into the city. He did get out and tried to get the acceptances, but failed, and then gave the deed of trust on both places.

It is also untrue that said J. T. Jefferson has failed to give the deed of trust and bond of indemnity provided for in the agreement. Said J. T. Jefferson executed a deed of trust on his individual interest in real estate in and near the city of Memphis as a security to the creditors. And, in addition to said deed of trust, respondent, being endorser of Jefferson & Edrington on some of their paper, executed a deed of trust on his individual interest in the same property, to secure the creditors to whom he was bound, as endorser. These two deeds of trust, or regularly certified copies of them, will be in evidence. J. T. Jefferson also executed the bond of indemnity provided for, with respondent as his security, which was accepted by the said Edringtons. Respondent denies that said J. T. Jefferson was, when the bill was filed, or is now, using all his power and influence to have the deed of trust enforced.

He supposes said Jefferson desires the debts due from Edrington and secured by the deed collected. But if is meant by this charge to allege that said J. T. Jefferson is attempting to force or improperly influence respondent to proceed in enforcing the deed of trust, the charge is utterly false.

In answer to the second amendment, respondent admits that Exhibit "Y" is a copy of the indemnity bond before alluded to. Re-

spondent thinks it rather remarkable that this paper was not
25 discovered and filed with the original bill, and not until after the injunction was obtained. Respondent denies that said bond is no security at all. He thinks it and the deed of trust before referred to a sufficient security to the estate of said Edrington. But if they are not, the insufficiency of the security does not affect the rights of the creditors secured by the deed of trust of said Edrington, or respondent's duties as trustee.

Respondent, answering further, states that not only is he made trustee by said deed of trust, Exhibit "B," but the indebtedness of said Edrington to Jefferson & Edrington secured thereby is reduced to the shape of promissory notes, and these are made payable to respondent, as trustee, as shown in said deed, and it is made the duty of respondent by the deed to collect said notes and distribute them among the creditors of said Jefferson & Edrington, *pro rata*, as the debts are set forth in the schedule, said creditors having extended their debts to the time of the maturity of the notes made by said Edrington to respondent, as trustee. Hence respondent conceived it to be his duty to collect said notes as they fell due, and he informed plaintiff, as executrix of said Edrington, when the first notes became due. Failure having been made to pay them, respondent, upon whom rested the burden of collection, would have thought it his duty to proceed under the deed of trust, even if the creditors had not desired him to do so; but the creditors, or a portion of them, did desire and request him to proceed, as hereinbefore stated. And if, for any reason, the injunction is not now dissolved, respondent asks that a receiver be appointed to hold the property and apply the profits to the secured debts.

26 And respondent further states that because of his duty to collect said notes, and also because of the false and slanderous charges of fraud and conspiracy made against him, he has thought it right and proper that he should answer this bill fully and at length.

And now having fully answered, respondent prays that the injunction be dissolved, the bill dismissed, and he [be] dismissed, with his costs.

JNO. W. JEFFERSON.
SMITH, SCOTT, AND COLLIER,
Solicitors for Respondent.

STATE OF TENNESSEE, *Shelby County:*

Personally appeared before me, the undersigned, commissioner of deeds for the State of Arkansas, at Memphis, Jno. W. Jefferson, one of the defendants in the foregoing answer, and made oath in due form of law that the facts stated therein of his own knowledge are true, and those stated upon information he believes to be true.

JNO. W. JEFFERSON.

Subscribed and sworn to before me, this Feb'y 27th, 1875.

[SEAL.] M. B. TREZEVANT,
Commisioner.

Filed March 1st, 1875.

J. K. P. HALE, *Clerk.*

27 *Answer of J. T. Jefferson.*

In the Circuit Court of Mississippi County, Ark.

NANCY A. EDRINGTON, as Executrix of James H. Edrington, Dec's'd, Plaintiff,

vs.

J. W. JEFFERSON, J. T. JEFFERSON, G. W. L. CROOK, JOHN MATTHEWS, and Emily Hazard and John H. Hazard, Adm'r of James H. Hazard, Dec's'd, Defendants.

The separate answer of J. T. Jefferson to the bill and amendments in the above-named cause.

Respondent admits the death of James H. Edrington; that the plaintiff is his widow; that he left the children named in the bill, and that said children are all minors. He also admits that said Edrington left a will, and that plaintiff is executrix thereof by proper appointment.

Respondent also admits that said Edrington for some time before his death had been engaged in business in Memphis, Tenn., as a partner of respondent as grocery and commission merchants, under the style of Jefferson & Edrington, and that the partnership began about the time stated in the bill.

Respondent also admits the illness of said Edrington for some time before his death with the disease that finally terminated his life, and that the disease was a painful one. This disease did, of course, render him physically unsuited for business, but respondent denies that it rendered him mentally unfit for understanding
28 business transactions. On the contrary, respondent states that his mind was clear, and he could well understand and appreciate his business matters.

Respondent admits that he had control of the business of Jefferson & Edrington during Mr. Edrington's illness, but he had no greater control of said business then than before. He had managed this business from the formation of the partnership, Mr. Edrington's time being taken up with his business in Arkansas; and respondent's control of the business during Edrington's sickness was just the same as it had been before.

But respondent denies that either during Edrington's sickness or before he managed the business for his own profit or emolument, disregarding the interest of said Edrington, as charged in the bill, or that he fraudulently converted the assets of the firm to his own use. This charge is utterly false.

And respondent also denies that he became more grasping in his designs on the partnership assets as Edrington's disease progressed.

Respondent also denies that he by wronging and annoying said Edrington procured the execution of the deed of trust referred to in the bill. Respondent states that said Edrington was indebted to the firm of Jefferson & Edrington in a large amount, and the amount secured by the deed in trust and the deed in trust was made to secure the said indebtedness. Respondent desired said indebtedness secured, as it was natural that he should do; but the deed in trust was ex-

ecuted chiefly at the instance and request of the creditors of Jefferson & Edrington, to whose benefit it would enure. Respondent believes the terms of the trust deed are correctly set forth in the
29 bill, but he refers to the deed itself. Respondent admits that about the time of the execution of the deed of trust he did make the agreement with the said Edrington, as substantially set forth in Exhibit "C" to the bill; and respondent states that he has carried out said agreement by giving the deed of trust and indemnity bond therin, as will more fully appear hereafter. But respondent denies that he ever entered into bond with J. J. Busby as security. This charge is an entire mistake, and the allegation afterwards made that the said J. J. Busby is insolvent is as unnecessary as it is untrue. Busby is a man of wealth. Respondent further admits that J. W. Jefferson, the trustee in said deed of trust, did advertise the land for sale under the terms of said trust deed, as stated in the bill.

As to the alleged incumbrance on the Whitmore place respondent says that none is stated in the deed of trust, and there is a covenant in said deed against encumbrances, but respondent did understand that there was an encumbrance on said place, and said Edrington agreed to relieve it. And he also thinks that the creditors of Jefferson & Edrington agreed that the Fane place should be quit-claimed when the encumbrance on the Whitmore place should be removed. But said Edrington did not remove them before his death, and it appears from the bill that they are not yet removed.

As to the alleged incumbrances respondent could only answer on information and belief, and he requires strict proof of said alleged incumbrances. But whether they be strict or not respondent
30 insists that they cannot affect the rights of the parties to said deed of trust, for they existed at the time of the execution of the deed, and were known to the parties executing the deed.

Respondent admits that the firm of Jefferson & Edrington had on the 6th of Feb'y, 1874, the time it first went to protest, assets to the nominal value stated in the bill; and respondent states that the first protest was on a firm acceptance of a debt of said Edrington, with which the firm of Jefferson & Edrington had no connection. That after this the business of the firm was suspended, and nothing more was done until after the dissolution on the 20th of March following. So that at the time of the dissolution, which was the day after the date of the deed of trust also, the assets were nominally of the value shown by the balance sheet. But this nominal value greatly exceeded the real value of the assets.

Respondent admits that since that time he has had entire control of the assets, and has not rendered any account thereof to said J. H. Edrington or his personal representatives for the reason that by the terms of the dissolution the assets belonged to respondent.

As before stated, at the time of the execution of the deed of trust, Exhibit "B," said Edrington either individually or as a member of other firms, in which he was interested in Osceola, Arkansas, was indebted to Jefferson & Edrington in the amount secured by the deed of trust. And the agreement, Exhibit "C," was that this indebtedness should be secured by city acceptances of deed of trust.

The deed, Exhibit "B," was executed to secure this indebtedness, and while this deed enures to the benefit of the creditors of Jefferson & Edrington, it was not made to secure an individual assumption of the indebtedness of the firm by Edrington, but to
31 secure his own debt to the firm.

By consent of all parties this debt was put into the shape of promissory notes made payable to Jno. W. Jefferson, the trustee, and falling due as shown in the deed; and as said notes, when collected, were to be appropriated to the debts of Jefferson & Edrington, the creditors extended their debts, making them mature as said notes matured. This is the whole transaction.

Respondent denies that he has neither paid nor secured any part of the indebtedness assumed by him. He has given a deed of trust to secure said indebtedness on his individual interest in a large amount of real estate situated in and around Memphis, which deed was accepted by the creditors. In addition to this John W. Jefferson, who was bound as endorser on some of the debts of Jefferson & Edrington, executed a deed of trust on his individual interest in the same real estate to secure the debts on which he was bound, as endorser. These two deeds of trust, properly certified, will be filed as evidence in this cause. The creditors accepted them as security.

And in addition to this respondent states that he has paid off the debts of Jefferson & Edrington to the amount of about eleven thousand dollars since the dissolution of said firm.

Respondent again denies that he has converted the assets of Jefferson & Edrington to his own use. He denies that he is the active and busy party in seeking the enforcement of the deed of trust, if by this charge it is intended to assert that respondent is using or endeavoring to use any undue means to have the deed enforced. He admits he desires the large debt due from Edrington to Jef-
32 ferson and Edrington, which is secured by the deed, collected and applied to the payment of the debts of Jefferson & Edrington; but as the plaintiff has failed to pay any part of said debt, or to make any effort to pay it, notwithstanding she admits in the bill that 400 bales of cotton have come to her hands, as executrix, respondent will desire the enforcement of the deed of trust, in order to compel the payment of said debt, if it is not paid in a reasonable time.

Respondent denies that he, J. W. Jefferson, and G. W. L. Crook, fraudulently combined and conspired to procure said deed of trust for their own interest. And he denies all charges of fraud made against him in reference to the execution of the deed. In fact, respondent had very little to do with the matter of getting the deed. It was executed chiefly at the request of the creditors of Jefferson & Edrington. But certainly it was very proper both that said creditors and this respondent should insist on the security being given. And respondent here again denies that said Edrington was mentally incapacitated to make said deed. The contrary is true, Edrington's mind was entirely clear, and he thoroughly understood the whole transaction. The plaintiff joined her husband in the execution of said deed, though she fails to state the fact in her bill. And re-

spondent insists that, having joined her husband in the execution of the deed, she is estopped from alleging his incapacity.

Respondent admits that said J. W. Jefferson, the trustee, is his brother.

He denies that the creditors of Jefferson & Edrington did not require the trustee to sell. He is informed that they did. And he again denies that he is the chief mover in the matter, though
33 he says that he has the perfect right to be the chief mover, as he is more interested than any one else, being responsible to the creditors for the entire indebtedness of Jefferson & Edrington.

Respondent supposes it true that complainant has had management of the entire business of said Edrington since his death. He also supposes it true that she has received 400 bales of cotton as the assets of said estate. Plaintiff does not inform us what has been done with the proceeds of said cotton in her bill. If the proceeds had been applied to the payment of the debts secured by the deed of trust, as it should have been, this litigation would have been unnecessary.

Respondent does not know how much cotton the plaintiff would be able to make on said plantation conveyed in this trust deed during the present year, nor is this at all material to the questions involved in this case. How much the property would sell for can only be ascertained by a sale; and the fact, if it be true that there are incumbrances on the property, cannot be used by the plaintiff, because said incumbrances existed and were known to said Edrington at the time the trust deeds were made. Respondent thinks it may be true that the property, if sold at that time, might not bring its full value. And, as far as he is individually concerned, he does not care to insist on a sale now, as he is anxious that the property shall bring its value, and it is greatly to his interest that it shall do so, in order that the debts of Jefferson & Edrington, secured by the deed, may be paid. Respondent denies that J. W. Jefferson, the trustee, is entirely irresponsible. Respondent supposes that he has given no security, as none has been required of him, as he is informed,
34 and the plaintiff in her bill does not require that security be given. Respondent supposes that the said J. W. Jefferson, trustee, is not only the agent and trustee of all of the creditors of Jefferson & Edrington secured by the trust deed, but also of the maker of the trust deed. He admits that J. W. Jefferson is not a resident of the State of Arkansas, but he is a resident of the city of Memphis, where the said Edrington and plaintiff resided at the time of the execution of the deed of trust, where the firm of Jefferson and Edrington did business, where many of the creditors secured by the deed reside, and where the notes given by the said Edrington to the trustee are made payable. And respondent supposes the trustee would remove the proceeds of sale to the city of Memphis.

Respondent does not know whether or not the creditors of Jefferson & Edrington, who are secured by said deed of trust, are proving their claims against the estate of Edrington. As prudent men would do so, he thinks it likely they are. Certainly the course of the plaintiff in refusing to pay the notes secured by the deed of trust,

and resisting the sale of the lands is calculated to make them do so. But respondent does not believe that said creditors are not looking to the deed of trust as security.

Respondent denies that he has a disposition or has endeavored to shift the entire responsibility of the debts of Jefferson & Edrington from himself to the estate of Edrington. On the contrary, he has given security for the debts, which he was to secure under agreement, Exhibit "C." These he does not expect or desire the estate of Edrington to pay. But he does expect and desire it to pay the debts secured by the deed of trust, Exhibit "B," because that security is for the debt of the said Edrington to Jefferson & Ed-
35 rington; and it is respondent's right as to himself and duty to his creditors to have the debt secured paid.

Respondent denies that he ought to be required to settle with Edrington's estate the partnership accounts of Jefferson & Edrington. These were settled on the dissolution, before the death of Edrington, as hereinbefore stated; and by the terms of the dissolution respondent became entitled to the assets of said firm.

Respondent admits the death of James H. Hazard, and supposes the persons named in the bill as such are his personal representatives.

Respondent, of course, cannot say how much a sale of the property under the trust deed would realize; and he again insists that the alleged incumbrances cannot affect the rights of the beneficiaries under the deed of trust.

Respondent knows nothing of the alleged orders of the probate court of Mississippi county; but said orders, if made, do not affect rights required by the deed of trust.

Respondent again denies that he has failed to carry out his agreement made by Exhibit "C." He did secure, and cause to be secured, the debts which he agreed to secure, by the execution of the two deeds of trust heretofore referred to in this answer, which deeds of trust were accepted by the creditors, as before stated. All the debts which respondent was to secure by said agreement have either been paid or secured. Respondent also carried out his agreement to give said Edrington an indemnity bond, which bond is Exhibit "Y" to plaintiff's bill. But if respondent had failed in all this, the deed of trust would still be valid as a security to the creditors of
36 Jefferson & Edrington secured thereby. Respondent denies that he is insolvent. He admits that he does not reside in Arkansas; he resides in Memphis, Tennessee.

Respondent knows nothing of the alleged circular letter of G. W. L. Crook; did not know it was written. He supposes that said Crook will explain it in his answer.

The deed of trust shows that said J. H. Edrington had, when it was executed, only an equitable interest in the Fain place, holding a title bond for same. But this equitable interest he conveyed, as he had the right to do, by said deed. As to the prayer of the bill, respondent denies that plaintiff has the right to require him to produce the books of Jefferson and Edrington, or to have an account of the partnership dealings, for the reasons already given.

In answer to the first amendment, respondent again admits the agreement as set out in the exhibit; but said agreement, as it shows for itself, was not that no deed of trust at all should be given; it was to give a deed of trust on the Fain place and acceptances also. Respondent denies that said Edrington was unable to get out into the city to get acceptances. He did get out, but failed to get them, and then gave the deed of trust on the Whitmore place also, in lieu of the acceptances, which security was accepted by the creditors, as aforesaid.

Respondent again denies that he failed to execute the deed of trust which he agreed to execute, and he again refers to the two deeds mentioned heretofore in this answer. He also again denies that he has failed to give the indemnity bond. Plaintiff's second amendment refutes this charge of her first. And respondent again denies
37 that he has failed to pay off or protect the indebtedness of Jefferson & Edrington, which he agreed to secure. He has already answered fully. And he again denies that he is using or attempting to use any power or any influence improperly to enforce the deed of trust, Exhibit "B." He has only done what he had the right to do for his own protection, and what it was his duty to the creditors of Jefferson & Edrington, secured by the trust deed.

The balance sheet, Exhibit "D," is correct, but respondent denies that it shows fraud. It was exhibited to J. H. Edrington and well understood by him before the execution of the deed of trust, and before the dissolusion of the firm of Jefferson & Edrington, as hereinbefore shown.

In answer to the second amendment, respondent admits the execution of the indemnity bond, Exhibit "Y." It was executed and delivered to said J. H. Edrington and accepted by him as sufficient security. It shows the terms of the dissolution of the firm of Jefferson & Edrington as they are hereinbefore stated.

Respondent denies that the security on the bond is not sufficient and that it amounts to no security. He avers that said bond, with the deeds of trust, Exhibits "A" and "B," are sufficient security to the estate of said Edrington to protect it from the debts agreed to be paid by respondent. But he again insists that if this were not so, it could not affect the rights of the creditors of Jefferson & Edrington, who are beneficiaries under said trust deed, Exhibit "B."

As to the balance sheet, Exhibit "D," respondent states that it shows the nominal amount and value of the assets of Jefferson and Edrington. It is true in this case, as in most others, that this nominal value greatly exceeds the real value. The amounts of this
38 excess cannot be now accurately stated. These things were all understood by said Edrington and respondent at the time of the dissolution.

And now having fully answered, respondent prays to be hence dismissed, with his costs.

J. T. JEFFERSON,
SMITH, SCOTT & COLLIER,
Solicitors for Respondent.

STATE OF TENNESSEE, *County of Shelby:*

Before me, the undersigned, commissioner for the State of Arkansas, in and for said county and State, duly commissioned and qualified, personally appeared J. T. Jefferson and made oath in due form of law that the facts as statad by him in the foregoing answer, as of his own knowledge, are true, and those stated on information derived from others he believes to be true.

J. T. JEFFERSON.

Subscribed and sworn to before me this February 27, 1875.

HUDSON CAREY,
Commissioner for Arkansas in Tennessee.

Com's fee, $1.00, paid by Jefferson.

Filed March 1st, 1875.

J. K. P. HALE, *Clerk.*

39 March Term (3), 1875, p. 232.

Upon motion in this cause, in open court, and for sufficient reason appearing, it is ordered by the court that the Washington Fire and Marine Ins. Co., the Planters' Insurance Company, J. C. Ward & Co., Appleton, Noyes & Co., North America Tie Company, be, and the same are hereby, made parties defendant to this cause, with leave to them to file answers and cross-bills, or such other proceedings as they may choose. Said defendants will file their answers and cross-bills within twenty days from this date, and may file them in vacation. The said plaintiff dismisses this cause as to G. W. L. Crook, and by leave of the court erases from the complaint matters relating to said Crook.

40 *Orders of Court.*

September Term (7), 1875, p. 244.

On this day, upon motion in this cause, and for sufficient reason appearing to the court, F. Banksmith & Co., a firm composed of F. Banksmith, a citizen of Memphis, Tennessee, and —— and Taylor & Bros., a firm composed of ——, Taylor and —— Taylor, citizens of Cincinnati, Ohio, are hereby made parties defendant in this cause, and the said defendants, upon further motion, are allowed ninety days within which to file their answers and cross-bills herein.

41 *Joint & Several Answers and Cross Bills of Defendants.*

In Mississippi Circuit Court. In Equity.

NANCY A. EDRINGTON, as Executrix of J. H. EDRINGTON, Deceased.

vs.

J. W. JEFFERSON, J. T. JEFFERSON, THE WASHINGTON FIRE AND MARINE INSURANCE CO. and others.

In this cause, upon the joint and several answers and cross-bill of defendants, this day to the court shown, and from the exigency of

the case, so far as regards temporary and immediate relief, heard *ex parte*, it is ordered and decreed—

That immediately upon presentation of this order and the answer and cross-bill of the defendants, that upon the defendants named in the cross-bill and answer giving bond in the sum of ten thousand dollars, as an injunction bond, that the clerk do and is hereby ordered to issue an injunction from this court in due form of law, as prayed in defendants' answer, restraining and enjoining John Matthews, who was appointed special receiver for the year 1875, from renting the Fain and Whitmore places, particularly described in the deed of trust and bill and answer and cross-bill in this cause filed, as by him advertised for rent at public auction, at the court-house at Osceola, upon the first day of March, 1876; that he neither, upon the first day of March aforesaid, nor upon any other day, rent the above-named real estate, or further meddle therewith.

That the clerk of this court, after due publication and
42 upon five days' notice to both parties, on the 10th of March, 1876, or as soon thereafter as may be possible, do rent the above-named plantations known as the Fain and Whitmore plantations.

That the clerk rent the aforesaid plantations, at the court-house door of the county and State aforesaid, to the highest bidder for the year 1876, requiring notes with approved security and retaining the lien upon the crop for rent.

That the clerk hold the notes which shall be received for rent subject to the order of this court, or the judge thereof.

Done in vacation at Corning, February 26, 1876.

L. L. MACH,
Judge of the Circuit Court in and for the Second Judicial District of Arkansas.

43 *The Joint & Several Answer & Cross Bill of Defendants.*

MISSISSIPPI, *set:*

In Mississippi Circuit Court. In Equity.

NANCY A. EDRINGTON, as Executrix of J. H. EDRINGTON, Deceased,
vs.
J. W. JEFFERSON, J. T. JEFFERSON, THE WASHINGTON FIRE & MARINE INSURANCE COMPANY and others.

The Washington Fire and Marine Insurance Company, a corporation chartered under the laws of Tennessee, citizens of the State of Tennessee.

The Planters' Insurance Company, a corporation created by the Legislature of the State of Tennessee, which has its home and office in Memphis, Tenn.

Appleton, Noyes & Co., a firm composed of George D. Appleton, Nathan D. Noyes, and John B. Mande, doing business under name and style of Appleton, Noyes & Co., citizens and residents of Saint Louis, State of Missouri; and—

J. C. Ward & Co., a firm composed of J. C. Ward and J. F. Holst, residents and citizens of Memphis, in the State of Tennessee.

Taylor & Bros., a firm composed of William W. Taylor and L. L. Taylor, residents and citizens of the State of Ohio.

F. Banksmith & Co., a firm composed of F. Banksmith, a resident and citizen of Memphis, Tennessee, and—

J. J. McComb, managing partner of the American Cotton Tie Company, a citizen of ——.

44 Orgill Bros. & Co., a firm composed of Edmund Orgill, G. L. Denison, John T. Willins, and A. L. Keen, citizens of Shelby county, Tennessee, and—

H. Wetter & Co., a firm composed of H. Wetter and George Schmalz Reid, citizens of Shelby county, Tennessee.

These defendants, jointly and severally, saving and reserving unto themselves all manner of exceptions which can or may be had or taken to the many errors and imperfections in said bills, original, amended, and supplemental, contained for answer thereto, or to so much or such parts thereof as he is advised is material or necessary for them to make answer, and say:

They admit that James H. Edrington is dead, and suppose the date of his death, as stated in complainant's bill, is correct.

They admit that complainant, Nancy A., has qualified as executrix of the will of J. H. Edrington, deceased, in Mississippi county, Arkansas.

Defendants, of their own knowledge, do not know how many children the said J. H. Edrington, deceased, left surviving him, nor their respective ages, but presumes the statement in the bill as to these facts to be true.

Defendants have no knowledge of what orders or proceedings have been had in the course of complainant's administration in the probate court of Mississippi county, Arkansas, and not sufficient information to answer them, hence they cannot admit the allegations in the bill in regard thereto, and call for proof of any orders therein that may in any way affect their rights.

Defendants admit that for some time previous to his death, the said J. H. Edrington had been engaged in business in the

45 city of Memphis, Tennessee, with defendant, J. T. Jefferson, under the firm name and style of Jefferson & Edrington, as grocers and commission merchants. They do not know the date said firm commenced business, but are informed and believe that it was as early as February 1st, 1872, and perhaps earlier.

Defendants further answering say that they do not know how long before his death the said J. H. Edrington had been afflicted with any painful bodily disease, but they deny that said disease prevented said Edrington from having clear and concentrated ideas of his business for the last five or six months of his life. On the contrary, defendants are informed, believe, and so state the fact to be, that said Edrington, during the last five months of his life, was clear and remarkably acute in business matters, and seemed to suffer but slight pain. They state that Mr. Edrington was only suffering from a tumor formed on his thigh, as they are informed, which in

no way affected his mind during the time before indicated, of five or six months before his death,

These defendants further answering say that they have no knowledge, nor have they information sufficient to found a belief upon, as to how or by whom the business of said firm of Jefferson & Edrington, during five or six months before the death of said J. H. Edrington, nor do they know what part said Edrington took therein during that time, but they are informed that during the months of January, February, March, April, May, and June, preceding the death of said Edrington, he was frequently at the store of said firm, and, on several occasions at least, negotiating with the creditors of said firm.

46 These defendants say they have no knowledge of the fraud alleged in complainant's bill against said defendant, J. T. Jefferson, during that time, to wit, the five or six months prior to Edrington's death, or any other time, nor have any information upon the subject sufficient to form an intelligent belief upon.

They say that they know nothing of any of the private transactions between said Jefferson and Edrington, as they had nothing to do with the same and never meddled therewith, except as hereinafter stated. But defendants state that they do know that the said firm of Jefferson & Edrington were largely indebted to them, severally, which they failed to pay. And they state that for a long time said Jefferson & Edrington both seemed to elude every effort these defendants and their other creditors could make to secure their claims or get them paid. And in this they can say that for a certainty said Edrington exhibited great adroitness and astuteness, as well as his partner, J. T. Jefferson. There was certainly no seeming want of clear conceptions and business tact and capacity exhibited upon the part of said J. H. Edrington in this matter from about January until negotiations closed, some two or three months before his death. These defendants know nothing of the manner in which said J. T. Jefferson managed the business, or whether he fraudulently converted the assets of said firm to his own use or not. They had nothing to do with that matter, and were not in a position to know or find out how the business was managed, but sure it is that said business was so managed and the assets so manipulated by Jefferson & Edrington, between them, that these respondents realized nothing upon their claims whatever at the time, nor have they yet.

Respondents deny that defendant J. T. Jefferson procured the trust deed from J. H. Edrington in his lifetime upon the said

47 Whitmore and Fain plantations described in the bill; but they aver that said trust deed was procured by the creditors of Jefferson & Edrington, or a part of them, these respondents. And that the matter was particularly pressed and finally consummated, through the exertions of the respondent, the Washington Fire and Marine Insurance Company.

Respondents, further answering, admit that on the 19th day of March, 1874, J. H. Edrington and his wife, complainant, Nancy A. Edrington, executed to J. W. Jefferson a deed in *and* trust to secure

respondent and others therein named, in the payment of the sums respectively set forth in schedule to said deed, upon the land described in said deed, exhibited with said bill of complainant, to which deed and schedule reference is made for more particularity as to the description of the land and the beneficiaries in said trust, Exhibit "B" to said bill; the description of the land is believed to be correct, which was conveyed in trust for the payment of said debts scheduled; but they hereby refer to said deed and schedule for particularity, in case of any error in description of the two plantations conveyed.

Respondents, further answering, say that they know nothing of any private agreement or arrangement between said J. H. Edrington and J. T. Jefferson, at the time said trust deed was executed, in regard to the balance or residue of the indebtedness of Jefferson & Edrington, not secured by said trust deed; nor do they know nor have they any information sufficient to found a belief upon as to any bond executed, or to be executed, by said Jefferson to said Edrington to hold him harmless as to the debts of said firm. Nor do they deem it a matter in which, or with which, they had any interest in any way. And they deny that any private
48 arrangement between said Jefferson and Edrington in that behalf could affect their rights, as they had the right to look to and rely upon the whole estate and property of each partner for the payment of their several debts.

Respondents admit that J. W. Jefferson, the trustee, advertised the land and premises in said trust deed described for sale under the provisions of said trust deed on January 21st, 1875, as will appear from said advertisement, and that he would have sold the same but for the injunction from this court.

Respondents, further answering from information and belief, deny that there is an incumbrance upon the said Whitmore place for the sum of eight thousand dollars, to wit, the Hazard mortgage, exhibited with complainants said bill. They are advised that the amount due to said Hazard on said debt did not exceed $7,000.00 at most, and that the same has, in fact, been entirely paid off, taken up, and discharged by complainant, Nancy A. Edrington, executrix of James H. Edrington, as will hereinafter be more fully set forth, which, by operation of law, operates as an entire discharge of said pretended incumbrance on said Whitmore plantation.

Respondents, upon information and belief, deny that there is an incumbrance on the said Fain plantation, as described in said trust deed, to the amount of $12,000.00 prior to the execution of said trust deed, Exhibit "B," for the unpaid purchase-money on said place due to one John Matthews as the assignee of Penelope Fizer *et als.* or any one else. Upon information and belief respondents deny that the sum of $12,000.00 was due on said Fain plantation for purchase-money. In like manner they aver that there was but one note due on said plantation for purchase-money, and that was only $5,000.

Respondents, upon information and belief, deny that said
49 John Matthews is or was the holder of said claim for the purchase-money of said place, or that he ever owned the same in

fact, or even in fact purchased the same for himself. But they, upon like information and belief, aver that if the claim, whatever it may turn out to be, for purchase-money of said Fain plantation due McCauley or the Hazard claim on the Whitmore place was ever purchased by the said John Matthews, it was purchased or paid off for complainant, Nancy A. Edrington, and in her behalf and under her direction, and that the money used for the taking up of said claims was not the money of said John Matthews, but was furnished to him by the complainant, Nancy A. Edrington, and that at that time she had the money belonging to the estate, and in her hands, as executrix, sufficient in amount to pay off said incumbrances on said land. And that the allegation that said John Matthews held and owned said claims in his own right or has any interest therein, except as the agent of complainant, Nancy A., is untrue in fact, and an attempted fraud upon these respondents and the creditors of James H. Edrington, whose claims are secured by trust deed on said two plantations as well as the other creditors of said estate.

They are advised that under the true facts of this case and the law applicable thereto the said incumbrance on the Fain plantation is absolutely discharged and removed from said land, and no longer exists as a lien thereon in the hands of any one, as will be more fully shown hereafter.

Respondents, further answering, say that they have no knowledge or information sufficient to found a belief upon as to how much or what the value of the goods was which Jefferson & Edrington had in their store at the time said deed of trust was executed. Nor have they any idea of the value of their other assets or choses in action. Nor do they know what became of said assets; but these respondents have never received a dollar therefrom on their said claims.

Respondents are not aware that their co-defendant, J. T. Jefferson, has been active or a "busy body" in having said deed of trust foreclosed. But respondents aver that they are the movers, and are largely interested to have said trust executed, to the end that they may realize their just claims.

Respondents are informed and believe that many of the debts or claims, in the schedule of claims annexed to said trust deed, have been paid off and discharged in full since its execution by J. T. Jefferson, or Jefferson & Edrington, as will more fully appear hereinafter.

Respondents deny that the procurement of said deed of trust was the result of any fraudulent combination between George W. L. Crook, secretary of the Washington & Marine Insurance Company, & J. T. Jefferson or any one else. They deny that they or either of them had anything to do with any corner upon James H. Edrington, nor did they have any knoweldge or information in that regard. And the respondents, the Washington Insurance Company, especially deny that it or its secretary had anything to do with any fraudulent combination, or corner upon said Edrington, in getting said deed of trust. It denies that it combined with J. T. Jefferson or any one else to procure said deed. On the con-

trary, it alleges the fact to be, that during the negotiations to secure its claim from Jefferson & Edrington, this company and all its officers dealt at arm's length with J. T. Jefferson; that much of the time the officers of said company, including its secretary, George W. L. Crook, were hardly upon speaking terms. This respondent would further state that said firm of Jefferson and Edrington owed it a large debt for borrowed money, nearly $12,000, at the time, and it singly and alone, so far as it knows, carried on all the negotiations with said firm, employed counsel, paid for abstracts, and traveling and other expenses in this matter, endeavoring to secure its debt, and both it and its officers and attorneys dealt at arm's length with both Jefferson & Edrington, and in forcing its debt it was forced to secure the claim of its complainants and others in said deed of trust aforesaid. It was over three months before this much was accomplished. It states that both James H. Edrington and J. T. Jefferson seemed determined to do nothing towards securing their creditors, and it was only from fear of proceedings in bankruptcy that finally forced the trust deed. It found Mr. Edrington, although exceedingly astute and wiry in evading, and Mr. Jefferson was no less so. And as far as Mr. J. W. Jefferson, the trustee, is concerned, it alleges as true that the trust deed was first drawn with one D. E. Noyes named as trustee, and Mr. Edrington himself in the store objected to this, and insisted upon J. W. Jefferson as trustee, which was finally acceded to by the creditors.

51

Respondents deny that J. T. Jefferson was the chief mover in the procuring of said trust deed. On the contrary he seemed to be a great drawback in procuring the same, or doing anything. The combination seemed to be between Jefferson & Edrington to keep from securing their creditors at the time. They emphatically deny all manner of fraud in the transaction on their part.

52

Respondents state that, so far as they know, all the creditors secured by said trust deed are anxious for its foreclosure and sale of the property.

Respondents admit that complainant, as executrix of James H. Edrington, was successful in the management of the affairs of said Edrington estate during the year 1874, including the plantations in question. They admit that, during the year 1874, there was made on said plantations belonging to J. H. Edrington's estate about 800 bales of cotton. They admit that at least 500 bales of said cotton were assets of the estate of said Edrington in her hands to be administered. And they are willing to admit that this 500 bales of cotton came to her hands; but they are a little curious to know what became of these assets, as none of it, so far as they are informed, has been paid over to the creditors. Sure it is these respondents have received none of it.

They admit that said plantations will not sell for sufficient to pay respondent's debts secured by said trust deed and other incumbrances. They state that said plantations are inadequate security to pay the claims remaining unpaid under said trust deed; but they are advised that they are, nevertheless, entitled to have said trust

deed foreclosed, and the lands therein described sold for what they will bring in the market. That they will not sell for sufficient to pay all the claims secured by said trust deed is no fault of respondent. *That there is,* if there be any lien prior to said trust deed, upon said Whitmore plantation, [it] exists by the wrong and fraud of complainant and her husband, J. H. Edrington, as will be shown by said trust deed; and if there were more than $5,000.00 due on the
53 Fain plantation at the date of said trust deed, also exists by misrepresentation on the part of complainant and her testator, J. H. Edrington, as appears from said deed; and will appear by the proof herein, and is no fault of these respondents, if it exists at all.

Respondents cannot state, of their own knowledge, whether said J. W. Jefferson, trustee, is irresponsible, financially speaking, or not, for want of certain information; but they are informed that it is true that said trustee has not given bond for the execution of said trust. Respondents deny that said trustee represents only an inconsiderable portion of the creditors preferred in said trust deed, but, on the contrary, they are advised that he represents all said creditors named in said trust deed, so far as it is usual for a trustee in such a conveyance in trust to represent either party. They are advised, by being named as trustee in said deed he represents all the parties thereto to carry into effect the stipulations and provisions thereof.

They admit that said trustee is not a resident of the State of Arkansas.

Respondents admit that many of the claims secured by said deed of trust have been proven in the probate court against the estate of sasd Edrington, but they aver that this was done merely as a matter of precaution, in case the security should turn out to be insufficient, to pay them in full; but they deny that said creditors do not look to said deed of trust as security for their debts, but, on the other hand, aver that all the creditors whose claims are secured by said deed of trust, look to and rely upon it as a security to its full extent.

Respondents again state that they know nothing of the course of action of their co-defendant, J. T. Jefferson, since execu-
54 tion of said trust deed. But whatever it may have been, they state that they had no connection therewith in any way.

Respondents state that they have no knowledge as to the solvency of the alleged bond taken by said Edrington from J. T. Jefferson, as they had nothing to do therewith, and never saw it, and the only information they have of its existence is derived from complainants.

Respondents deny that they have anything to do with the partnership settlement between J. T. Jefferson and the representatives of J. H. Edrington.

Respondents suppose it is true that James Hazard is dead, and that Emily R., his widow, and her son John are heirs-at-law, are joint administrators of his estate.

They know nothing of the state of accounts between said J. T. Jefferson and the estate of the said J. H. Edrington, and they deny that they anything to do therewith.

Respondents, further answering, deny that they know anything of the state of accounts of the said firm as between the partners J. T.

Jefferson and J. H. Edrington, nor do they know anything of their private accounts and agreement "*inter se*" except what appears of record, hereinafter alluded to, and the admission by said J. H. Edrington that he owed the concern of Jefferson & Edrington about $30,000.00. Respondents would state that said J. T. Jefferson did execute a trust deed upon his interest in certain property in Shelby county, Tennessee, to secure generally the creditors of Jefferson & Edrington *pro rata* in the sum of $11,992.37, which deed is of record in the register's office of Shelby county, Tennessee. They have not any knowledge of any private contracts between said
55 Jefferson and Edrington except the contract which is of record at Osceola, Mississippi county, Arkansas, which will be hereinafter again referred to.

Respondents state that they know nothing, nor have they any certain information, of the contents, existence of, or stipulations contained in the alleged indemnity bond given by J. T. Jefferson to J. H. Edrington, in his lifetime, upon which J. W. Jefferson is alleged to be security. It is not filed with complainant's bill, hence defendants can neither admit nor deny the allegations in regard thereto, but they state that they had nothing to do with bond of indemnity, and have no concern with it, except, if such a bond exists, they are anxious that it should be a good solvent bond as complainant can be.

Defendants deny generally every and all allegations of fraud or collusion with others to defraud J. H. Edrington, or any one else in the premises.

The defendant, the Washington Insurance Company, would further state, as to the item of expense referred to in said complaint of $937.19, it is at a great loss to know what interest complainant has therein, or how the estate is prejudiced thereby. But it will state the facts to be substantially as follows: In the winter of 1873–'4 said firm of Jefferson & Edrington were in failing circumstances, and in the spring of 1874 they failed or went to protest. Said firm owed a large amount of debts; among them said firm owed the defendant a large debt for money borrowed—nearly $12,000.00—which it was very desirous to have paid or secured; hence took an active interest, through its officers, in forcing said firm and its members to secure the creditors.

56 This defendant, so far as it knows, carried on all the negotiations which finally resulted in the trust deeds from said Edrington and from J. T. Jefferson. It employed counsel who spent much time in endeavoring to secure said debts, procured abstracts of various pieces of property, both in Arkansas and Shelby county, which was offered as security by the members of said firm, and paid for them. Its attorneys examined title to fifteen or twenty different pieces of property offered. They made several trips to Arkansas upon this matter. This defendant paid all these expenses, through the entire negotiations, which lasted nearly four months before it was closed by the giving of the trust deeds aforesaid. It paid for all the travelling expenses. It also had to pay for the acknowledgments and registration of these trust deeds, which were taken for

the benefit of all the creditors alike, therein named, of Jefferson and Edrington. This was all paid by said insurance company, and amounted in the aggregate to $937.19, and was for the benefit of all the creditors named alike, as the deeds will show. And as all the creditors named in the trust deed were equally benefited in proportion to the amount of their debts secured, and had stood by and let it pay out this money for their benefit, this defendant thought it nothing but just and right that all the other creditors secured should contribute their *pro rata* of the expenses paid out by this company in securing their debts, hence the circular letter spoken of, which was sent to the other creditors to give them an opportunity to contribute their *pro rata* of said expenses, if they saw proper. If this was fraud this defendant failed to realize it.

57 Respondents, further answering, state that the complainant joined her husband, J. H., in the execution of said trust deed, and raised no objection thereto, on any ground, and they are advised that said complainant is estopped from claiming that her said husband, J. H., was incapacitated by reason of any defect in his understanding to execute said trust. They state that he had promised to secure about $30,000.00 of said debts by trust deeds months before he did, and had promised to remove all incumbrances from the Whitmore plantation, and matters were delayed a long time on his promise to do so, before executing the trust, in or that that place should be free from all incumbrances, as all of which complainant well knew.

Defendants, further answering by way of cross-bill, respectfully state and charge that they are severally creditors of the late firm of Jefferson & Edrington, of which complainant's testator was a partner; that on March 19th they severally gave an extension to said firm, and new notes were executed, which were to be executed and secured by the members of said firm.

That the defendant, The Washington Fire and Marine Insurance Company, was a creditor of said firm, having a claim against it for about $11,992.37, which is evidenced by eight certain promissory notes as follows, to wit, all bearing date March 19th, 1874, for the following amounts and due at the following dates:

1. One note for $953.36, due November 15th, 1874.
2. One note for $1,988.88, due November 15th, 1874.
3. One note for $2,014.47, due Jan'y 15th, 1875.
4. One note for $965.62, due January 15th, 1875.
5. One note for $2,039.20, due March 15th, 1875.
6. One note for $977.46, due March 15th, 1875.
7. One note for $889.72, due May 15th, 1875.
8. One note for $2,064.26, due May 15th, 1875.

58 Which said notes and claims have been duly filed and probated and allowed in the probate court of Miss. county, Arkansas, at the April term, 1875, of said court. All of said notes bear interest on their face at the rate of 8 per cent. per annum from maturity until paid. The whole claim is due and unpaid, with interest, all of which will more fully appear from the record of the said matter in said probate court, in the matter of Nancy A. Ed-

rington, ex'tr'x, etc., and from said notes, which will be filed herein before hearing if required.

That the said late firm of Jefferson & Edrington, of which complainant's testator, J. H. Edrington, was a member, was and is indebted to defendant, The Planters' Insurance Company of Memphis, Tenn., in the sum of about $2,200.00, evidenced as follows, by four promissory notes made by said firm, all dated March 19th, 1874, to wit:

One note for $527.63, due November 15th, 1874.
One note for $534.32, due January 15th, 1875.
One note for $540.99, due March 15th, 1875.
One note for $547.67, due May 15th, 1875.

All of said notes have been duly probated and allowed against the estate of said J. H. Edrington in the probate court of Miss. Co., Ark., at the April term thereof. The entire claim is still due and unpaid, together with the interest thereon, as will fully appear from said notes and transcript of the proceedings in reference thereto had in the said court in the matter of Nancy A. Edrington, executrix of J. H. Edrington, deceased, which will be filed before the hearing if required.

That the said late firm of Jefferson & Edrington, of which firm complainant's testator, J. H. Edrington, was a member, was
59 and is indebted to the defendants, Taylor, Jay & Co., in the sum of $1,263.12, which is evidenced by four promissory notes, all bearing date March 19th, 1874, as follows:

One note for $299.73, due November 15th, 1874.
One note for $303.46, due January 15th, 1875.
One note for $307.25, due March 15th, 1875.
One note for $312.64, due May 15th, 1875.

All of said notes have been duly probated and allowed against the estate of said J. H. Edrington in the probate court of Miss. Co., Ark., at the April term of said court, 1875, in the matter of Nancy A. Edrington, ex'tr'x, etc. The entire claim is still due and unpaid, together with interest thereon, as will fully appear from said notes and transcript of the proceedings in said probate court, which will be filed before the hearing if required.

That the said firm of Jefferson & Edrington, of which complainant's testator, J. H. Edrington, was a member, was and is justly indebted to the defendants, Appleton, Noyes & Co., in the sum of $905.04; which claim is evidenced by four promissory notes, made by Jefferson & Edrington, all bearing date March 19th, 1874, as follows:

One note for $224.27, due January 15th, 1875. (4 ?)
One note for $222.01, due November 15th, 1774.
One note for $227.64, due March 15th, 1875.
One note for $230.52, due May 15th, 1875.

All of said notes have been duly probated and allowed against the estate of said J. H. Edrington in the probate court of Miss. Co., Ark., at the July term of said court, 1875. The entire claim is due and unpaid, with interest. All of which will appear from said notes,

and the transcript of the record of said probate court in the
60 matter of Nancy A. Edrington, ex'tr'x of J. H. Edrington, deceased, which will be filed on or before the hearing if required.

That the said late firm of Jefferson & Edrington was and is justly indebted to the defendants, J. C. Ward & Co., in the sum of $285.79, evidenced by their note of date March 19th, 1874, and due January 15th, 1875. Said note has been duly probated and allowed against the estate of said J. H. Edrington in the probate court of Miss. county, Arkansas, in the matter of Nancy A. Edrington, executrix of J. H. Edrington, deceased. The whole of said claim is still due and unpaid, together with interest thereon.

That said late firm of Jefferson & Edrington, of which complainant's testator, J. H. Edrington, was a partner, was and is indebted to the defendants, Orgill Bros. & Co., in the sum of about $540.22, evidenced by four promissory notes, made by said firm, all bearing date March 19th, 1874, as follows:

One note for $132.56, due November 15th, 1874.
One note for $134.21, due Jan'y 15th, 1875.
One note for $138.86, due March 15th, 1875.
One note for $137.59, due May 15th, 1875.

Which said claim has been probated against the estate of said J. H. Edrington in the probate court of Miss. county, Ark., in the matter of Nancy A. Edrington, ex'tr'x of J. H. Edrington, deceased. The whole claim with interest thereon is still due and unpaid, together with interest thereon as will fully appear from said notes and record in said probate court, which will be filed on or before the hearing if required.

That the said late firm of Jefferson & Edrington, of which complainant's testator was a member, is indebted to defendants,
61 F. Banksmith & Co., in the sum of $261.52, evidenced by four certain promissory notes, made by said firm, all of date March 19th, 1874, and as follows:

One note for $83.73, due November 15th, 1874.
One note for $84.84, due on Jan'y 15th, 1875.
One note for $85.94, due March 15th, 1875.
One note for $87.01, due May 15th, 1875.

All of said notes and claims have been probated and allowed against the estate of said J. H. Edrington, deceased, in the probate court of Miss. county, Ark., in the matter of Nancy A. Edrington, ex'tr'x of J. H. Edrington, deceased, all of which is still due and unpaid.

That the said late firm of Johnson & Edrington, of which complainant's testator, J. H. Edrington, was a member, was and is justly indebted to defendants, H. Wetter & Co., in the sum of $—— upon four promissory notes, all bearing date March 19th, 1874, as follows:

One note for $37.50, due November 15th, 1874.
One note for $37.99, due January 15th, 1875.
One note for $38.46, due March 15th, 1875.
One note for $38.98, due May 15th, 1875.

All of said notes have been duly probated and allowed in the

probate court of Mississippi county, Ark., against the estate of J. H. Edrington, deceased, in the matter of Nancy A. Edrington, ex'tr'x of J. H. Edrington, deceased, all of which is unpaid, together with interest thereon.

That the said late firm of Jefferson & Edrington, of which complainant's testator, J. H. Edrington, was a partner, was and is indebted to the defendant, J. J. McComb, managing partner of the American Tie Company, upon four certain promissory notes, all bearing date February 27th, 1874, as follows:

62 One note for $1,957.87, due November 15th, 1874.

One note for $1,976.87, due January 15th, 1875.

One note for $2,001.05, due March 15th, 1875.

One note for $2,026.27, due March 15th, 1875.

All of said notes have been duly probated and allowed against the estate of said J. H. Edrington in the probate court of Mississippi county, Ark., in the matter of Nancy A. Edrington, ex'tr'x of estate of said J. H. Edrington, all of which will more fully appear from said notes & the record of said proceedings in said probate court; said entire claim is still due and unpaid.

Respondents further state and charge, upon information and belief, that at the time the said firm of Jefferson & Edrington failed, or suspended payment, that the said J. H. Edrington, as a member of another firm of J. H. Edrington & Co. (composed of said Edrington and John Matthews), was indebted to the firm of Jefferson & Edrington in the sum of about $13,127.56, and that he was further indebted to said firm of Jefferson & Edrington, for the C. H. Gaylord account, in the sum of $15,626.65, making an aggregate that said Edrington owed said firm at the time of $28,754.21, which was a legitimate asset of said firm of Jefferson & Edrington, and which said sum and debt was recognized as right and proper by said Edrington, and which he agreed to pay.

They further state that about this time the creditors of the firm of Jefferson & Edrington were pressing the said firm and its members for a settlement of their claims against it, and pressing and urging the individual members to secure them. They further charge that on the — day of March, 1874, the said J. H Ed-

63 rington and his wife, complainant Nancy A., made their certain deed and contract in writing, a duly authenticated copy of which, with the certificate of acknowledgment, is here exhibited as Exhibit "A" to this answer and cross-bill, and made a part thereof, the original not being in possession of respondent, but said contract is of record in the register's office of Mississippi county, Arkansas. In said contract, among other things, it is recited and provides as follows: "This article of agreement, made and entered into between J. H. Edrington, on the one part, and J. T. Jefferson, of the second part, witnesseth that in order to satisfactorily arrange and close up the business of the mercantile house of Jefferson & Edrington, and for the purpose of securing the creditors of said firm mentioned in schedule "A" to this instrument, etc., etc., the present payment of their debts," etc.; and the said J. H. Edrington thereby bound himself to pay two items of indebtedness, owing to said firm of Jeffer-

son & Edrington aforesaid, and known on the books of said firm as the Edrington & Co. account, for $13,127.56, and the C. H. Gaylord account for the sum of $15,626.65; aggregate of $28,754.21. Said deed and article of agreement further provided that for the said debt due from said J. H. Edrington & Co. to Jefferson & Edrington of $13,127.56 he, the said J. H. Edrington, was to give his four notes of equal amounts, payable in November, 1874; January, March, and May, 1875, with approved security; and for the said Gaylord debt the said Edrington thereby bound himself to execute and cause to be executed the four notes of himself and the said C. H. Gaylord for $10,626.65; each note for the equal fourth thereof, due and payable in November, 1874, and January, March, and May, 1875, with approved security; and for the remaining $5,000.00 of the
64 Gaylord debt the said Edrington and Gaylord should execute their joint notes, due November 15th, 1875, with eight per cent. interest, but said last note not to be paid if the debts of Jefferson & Edrington should be otherwise paid by or before that time.

It was further stipulated that the said first four notes, aggregating $10,626.65, given for part of the said Gaylord debt, should be secured by trust deed on the following real estate situate, lying, and being in the county of Mississippi, and State of Arkansas, as follows: The northwest quarter of section thirty-six (36), the northeast quarter of section thirty-six (36), the southwest quarter of section three (3), the northwest quarter of section thirty-one (31), except eleven acres thereof, sold by decree of the court of Mississippi county, Arkansas, all in township thirteen (13), north of range ten (10) east.

And it was further in and by said article of agreement provided that "if the said J. H. Edrington should be unsuccessful in getting the city acceptances in the Edrington & Co. account aforesaid for $13,127.65, as described in a former part of said agreement, then the said James H. Edrington should give as security for the payment of the whole of the Gaylord account of $15,626.65 and the Edrington & Co. account of $13,127.56 a trust deed upon his plantation in Mississippi county, Arkansas, known as the Whitmore place and the Witherspoon place, and relieve said Whitmore place of all incumbrances thereon.

Said Witherspoon place is described therein as follows: The southwest corner of section five (5), the northwest quarter of section
65 seven (7), southwest quarter of section seven (7), west half of northeast quarter of section seven (7), northeast quarter of section eighteen (18), the east half of section nineteen (10), and the west half of section twenty (20), in township eleven (11) north, of range eleven (11) east; and the southwest quarter of section thirty-six (36), in township fourteen (14) north, of range ten (10) east.

And the land composing said Whitmore plantation being described as the southwest fractional quarter of section thirty (30), in township thirteen (13) north, of range eleven (11) east; the south half of section twenty-five (25), the south half of section twenty-six (26), the southwest quarter of section thirty-four (34), in township thirteen (13) north, of range ten (10) east.

Said contract and agreement contained further stipulations, all of

which will more fully and at large appear by reference to said contract, Exhibit "A" hereto, to which reference is hereby especially made.

Respondents, on information and belief, and so charge, that said J. H. Edrington never did execute said notes and give personal security, or city acceptances thereon, for said amounts, as set forth in said articles of agreement, nor did he relieve said Whitmore plantation from all incumbrances in his lifetime, as therein covenanted, nor did he execute a trust deed upon said Witherspoon place, or carry out the agreement therein contained. And respondents are advised and believe, and so charge, that the effect of said articles of agreement and covenants therein in equity is to dedicate the whole of the land therein described to the payment of the creditors of said Jefferson & Edrington, whose names are set out in the sched-
66 ule to said contract, and that in equity the respondents and the other creditors of Jefferson & Edrington named in said contract have an interest therein, and have a right to be subrogated to all the rights of J. T. Jefferson in and under said contract in addition to the individual rights of respondents and other creditors therein named in said schedule as creditors of said firm of Jefferson & Edrington, and that the lien created in their favor by said contract is superior to any claim of the individual creditors of J. H. Edrington to said land, except by prior judgment or mortgage lien, and entitles said respondents and other creditors of said firm named to payment of the amount secured or stipulated in said contract first, as an asset of said firm of Jefferson & Edrington against the individual creditors of said J. H. Edrington.

That the effect of said contract is to dedicate the said Witherspoon plantation to the payment of said claims as well as the other plantations hereinafter named.

Respondents further state and charge that the said J. H. Edrington and his wife, the complainant, Nancy A., did afterward execute their certain deed in trust, which bears date March 19th, 1874, and was duly acknowledged by them on the 15th day of June, 1874, and recorded in the register's office of Mississippi county, Arkansas; which deed is hereby filed Exhibit "B" hereto and made a part hereof, in and by which said J. H. Edrington and complainant, Nancy A., conveyed to John W. Jefferson, trustee, for the purposes hereinafter named, the following-described real estate, situate, lying, and being in the county of Mississippi and State of Arkansas, known as the Whitmore place and the Fain place, to wit: The southwest quarter of section thirty (30), in township thirteen (13), range eleven
67 (11) east; the south half of section twenty-five (25), the south half of section twenty-six (26), and the southwest quarter of section thirty-four (34), all in township thirteen (13), range ten (10) east, containing 902 acres, etc.; and the said Fain place, described as follows, to wit, the northwest quarter of section thirty-six (36), in township thirteen (13), range ten (10) east; the southwest quarter of section three (3), in township twelve (12), range ten (10) east; also, the northwest fractional quarter of section thirty-one (31), in township thirteen (13), range eleven (11) east in said county, "warranted

to contain all the cleared land on said Fain plantation & buildings." It is further covenanted in said deed that said Whitmore plantation is free from all incumbrances.

Respondents further state and charge that at the time said trust was executed it was stated by said J. H. Edrington that he had paid off a large amount of the Hazard mortgage hereinafter specified and had his arrangements already perfected to remove the whole of said mortgage, which would be done in a few days, as soon as he could go to Osceola, which would be in a week or so thereafter.

They show that it is further stipulated in said deed that the only incumbrance on said Fain place aforesaid was one note (the last note), for the purchase money thereof, for $5,000.00, due to Mrs. Penelope Fizer and S. B. McCauley, etc.

Respondents further state and charge that at the time of the execution of said trust deed by the parties aforesaid, said James H. Edrington stated that he had paid off all the purchase-money on said Fain place, except the said last note for $5,000.00, and upon inquiry by the attorney of the creditors of Jefferson & Ed-
68 rington as to where said notes were that had been paid off the said Edrington asserted that he had it, and thought he had it at his house, and looked in a large pocket-book or portfolio and hunted for the notes, and did not find it, and then called his wife, complainant Nancy A., into the room and had her look in some drawers in the bureau to find the notes. She failed to find it, and [he] then called upon her to know if it was not a fact that he had paid off all incumbrances and notes for the purchase-money of said Fain plantation, except the one for $5,000, and she concurred with him that he had. And said Edrington stated as a positive fact that all said notes but the one was paid. And he further stated that he was then satisfied that said notes were in Osceola, Ark., in the safe of Edrington & Co., where most of his private papers were, and that as soon as he went to Osceola he would get the notes and show them to us; that they were certainly there. Complainant, Nancy A., asserted all this. And respondents were satisfied that such was the fact, as said Edrington had on two previous occasions searched for papers, thinking he had them at Memphis, and then stated they were in his safe at Osceola, which respondents had always found to turn out to be true; they had found them in his safe at Osceola as stated every time. But after this transaction said J. H. Edrington never went to Osceola again, as respondents are informed and believe, and said notes which had been paid off remained in his safe until his death.

Said trust deed was made, as it purports upon its face, to secure the creditors of said firm of Jefferson & Edrington, named in the schedule of creditors thereto, which is hereby referred to, the sum of $28,754.21, which is the exact amount of the said Edrington & Co's. and C. H. Gaylord & Co's. indebtedness to said firm,
69 which said J. H. Edrington had covenanted in the contract aforesaid to secure, and which he owed said firm and was bound to pay, and for which he executed notes to the trustee, J. W. Jefferson, as therein described.

Respondents charge that said Edrington did not remove the said incumbrance from said Whitmore plantation in his lifetime, as he had covenanted to do in said contract, in which complainant, Nancy A., joined.

They further charge, that although said J. H. and complainant Nancy A. covenanted in said deed of trust, that said Whitmore was free from all incumbrances, they are informed from information derived from said complainant's said bill that it was not.

They further show that by the terms of said trust it is shown that for the said sum of $28,754.21, secured thereby to the creditors of Jefferson & Edrington, who were the second parties to said deed, is evidenced by nine certain promissory notes as follows, all dated March 16th, 1874, as follows:

One note for $3,281.89, due November 15th, 1874.
One note for $3,281.89, due January 15th, 1875.
One note for $3,281.89, due March 15th, 1875.
One note for $3,281.89, due May 15th, 1875.
All the foregoing made by J. H. Edrington alone; also,
One note for $2,656.66, due November 15th, 1874.
One note for $2,656.66, due January 15, 1875.
One note for $2,656.66, due March 15th, 1875.
One note for $2,656.66, due May 15th, 1875.
One note for $5,000.00, due November 15th, 1875.

The last five notes made jointly by said Edrington and C. H. Gaylord. All payable to the order of J. W. Jefferson, trustee, and bearing interest at eight per cent. per annum.

70 Said trust deed further provides for the sale of said lands by the trustees upon failnre to pay any part of said notes at maturity, for full particulars reference is hereby made to said trust deed, exhibited with complainant's bill and this answer and cross-bill. It is further provided that said claim, as secured, shall constitute a trust deed for the payment of creditors of Jefferson & Edrington named in the schedule thereto, to be paid to them upon their claims, *pro rata*, etc., including respondents therein specified.

But respondents charge, upon information and belief, that since the execution of said contract, Exhibit "A" hereto, and said trust deed, Exhibit "B," that many of the creditors named in said schedule have been paid off in full by J. T. Jefferson.

They charge that the following creditors named in said schedule have been so paid off and their claims saitisfied in full by him, to wit, and to the following amounts, to wit:

C. H. Gaylord & Co. paid	$525 00
Chamberlain & Co. paid	200 00
J. Q. Shaw & Co. paid	127 46
Rutland, Graham & Co. paid	284 03
Hulbert & Reeves paid	243 25
Amos Munson paid	434 60
T. P. Davis paid	296 39
Dupant & Co. paid	3,305 50
G. A. Richard paid	300 00

	T. J. Enoch paid	216 49
	N. B. Lafoute paid	276 45
	Mrs. E. Mary paid	585 82
	A. M. Stewart paid	499 52
71	E. & T. L. Dickinson paid	978 54
	Mrs. D. McCam paid	998 00
	Almont & Bro. paid	143 22
	H. C. Brown paid	303 39
	Anders & Beasley paid	122 68
	Mrs. E. McGinnis	125 09
	A. Pearson, led. bal., paid	104 59
	Green & Lucas paid	500 00

And that, in addition to this, H. Fitzgerald & Co. have been paid on their claim the sum of $750.00, if not more. Complainant charges, that all of said creditors of Jefferson & Edrington above have been paid off, their claims discharged, and are not entitled in any way to participate in the trust fund, or proceeds of the trust property described in said contract and deed of trust — respondents.

Respondents are informed and believe that other creditors of said firm of Jefferson & Edrington have been paid off by said J. T. Jefferson, and are not entitled to participate in the said trust fund, altogether amounting in the aggregate to about $12,000.00. They are informed and believe that Green & Lucas, who are creditors named in said schedule to trust deed and contract, held collaterals to secure said debt due to them, which they have since sold and applied the proceeds thereof to their claim, and there is now nothing due to them. They are here called upon to disclose under oath all the facts connected with said transaction and debt if they claim anything.

Respondents charge and show that, notwithstanding the facts above alleged and the covenants contained in said contract and deed of trust, the said complainant claims that instead of the
72 $5,000.00 note yet due to Penelope Fizer and Samuel B. McCauley, *complainant claims* that there *is* two notes, amounting to about $12,000.00, yet due on said Fain plantation for purchase-money, and that one John Matthews has purchased and now holds said two notes amounting to $12,000.00

Respondents, upon information and belief, charge that at the time of the execution of said trust *that* there was only the one note, the last note for the purchase-money of said Fain plantation, due to Penelope Fizer and Samuel B. McCauley, which was the last note for the purchase-money of said Fain place for the sum of $5,000.00; that all of the purchase-money for said place except this note had been paid off and discharged by said J. H Edrington in his lifetime; that the next to the last note for said purchase-money had been paid off by said Edrington, and was in the safe of Edrington & Co. at the time of his death.

They charge that complainant, Nancy A. Edrington and John Matthews, either one or both of them, found said note in the papers of said J. H. Edrington after his death, and have fraudulently set

the same up as an incumbrance for purchase-money on said place, well knowing that the same had been paid off.

Respondents, upon like information and belief, charge that said John Matthews never, in fact, purchased said notes from Penelope Fizer and S. B. McCauley for the balance of purchase-money on said Fain plantation. If he did purchase the same he did it as the agent of complainant, Nancy A. Edrington, and never used his own money for the purchase thereof, but did it with money furnished by compl'nt, Nancy A., to him and for her benefit.

73 They charge that the alleged purchase of said claim by John Matthews in his name was a shrewdly-concocted scheme and an attempted fraud upon the creditors of Jefferson & Edrington, who were secured by the said trust deed on said plantation and an attempt to swindle and defraud said creditors out of $12,000.00— at least $6,000.00 — by said act. They charge that the whole transaction was made in the name of said John Matthews as a cloak and cover to conceal the fraud attempted upon said creditors; that John Matthews had no real pecuniary interest in said purchase; that he nor complainant never bought but the one note from McCauley and Mrs. Fizer, and that is for the sum of $5,000.00, instead of two notes for the aggregate sum of $12,000.00.

That one of said notes complainant and said John Matthews found among the papers of said J. H. Edrington and have attempted to fraudulently set up as against respondent and other creditors secured by said trust deed; and they charge that said Matthews in all this matter has acted as agent of complainant Nancy A. Edrington as ex'tr'x of J. H. Edrington, deceased, and did not use his own money in the transaction, and it was only in this capacity and under the instructions of said Nancy A. that said claim was bought by him.

Respondents further charge that said John Matthews never purchased the said Hazard notes and mortgage on the said Whitmore plantation from Emily Hazard and John Hazard for himself or with his own money; that if he purchased the same at all, he did it at the instance and request or for the benefit of complainant, and with money furnished by her for that purpose, and not with his own money or his own account. They charge that the pretense that said

74 Matthews bought said notes and claims is part and parcel of a combination and attempt to defraud respondents and the other just creditors of Jefferson & Edrington secured by said trust deed.

Complainant charges that the incumbrance on said Whitmore plantation due to the Hazards was $8,000.00; but respondents upon information and belief charge the truth to be that it was only about $7,000.00, and that complainant never paid more than $7,010.00 for said claim.

Respondents, in reference to the last above named transactions, as in the alleged purchase of the incumbrances on the Whitmore and Fain plantations by John Matthews and complainant, or by said John Matthews for complainant, at her instance, state and charge upon information and belief, that J. H. Edrington departed this life about August 12th, 1874; that he had a large crop of cotton and corn

upon his plantations in Mississippi county, Ark., when he died; that after his death complainant Nancy A. qualified as ex'tr'x under his will; that for the year 1874 said camplainant, as executrix aforesaid, received over 800 bales of cotton from said plantations; that over 500 bales of said cotton and their proceeds were properly assets of said estate for the payment of said Edrington's debts; that the proceeds of said cotton above amounted to between $25,000.00 and $30,000.00; that besides this complainant, as executrix, received and collected other sums of money from other sources, amounting to $——, the exact amount being unknown to respondents, making at least $30,000.00, which came to the hands of said administrator as assets of said estate for the payment of debts.

Respondents charge that at the time complainant claims that said claims or liens against Fain and Whitmore plantations
75 were bought she had in her hands money and assets, property belonging to said estate, more than sufficient to pay off and discharge said liens, which it was her duty to apply to the payment of said claims, whatever they were.

That if complainant did not, at the time she claims that said claims were brought, have funds of the estate to pay them in money, she had it a short time afterwards or before, sufficient for the purpose, which she has never applied to the payment of the debts against said estate, in any legitimate way, as was her duty.

Respondents, upon information and belief, charge, further, that the said assets of the estate of said J. H. Edrington were, either directly or indirectly, used in payment of said Hazard mortgage or claim on said Whitmore place, and in payment of the said Fizer and McCauly claim on said Fain place, for purchase-money.

Respondents charge, upon information and belief, the fact to be that whether complainant, Nancy A., or her agent, John Matthews, used the money that was actually assets of the estate of J. H. Edrington, or used other money in the actual transaction as a cloak or to cover up the real transaction, the effect is the same, because they in like manner again charge that said complainant had the funds and assets of said estate to pay off these incumbrances, which should have been applied thereto, and neither administratrix, nor her agent, John Matthews, had any right to speculate in the claims against said estate.

Respondents are advised and believe, and so charge, that the said claims were purchased against Fain and Whitmore plantations in the interest of compl't, Nancy A., and by monies and means supplied by her whilst executrix, and she having before that
76 time received into her hands assets of the estate sufficient to pay the same off, and that the alleged purchase of said claims by John Matthews in his name was an attempted fraud by compl't and her said agent upon the creditors afore-said secured by said contract, and that the effect of said purchase, in equity, is to extinguish, pay off, and discharge said Hazard mortgage on the Whitmore place, and the said claim and note for purchase-money in favor of said Fizer and McCauley on the Fain place as against said creditors of

J. H. Edrington named in the schedule to said trust deed, and leave said two plantations clear of said incumbrances, whatever they were.

Respondents are advised that compl't, Nancy A., is estopped, as well as persons claiming by, through, or under her, or her agents, from setting up the Hazard claim on Whitmore, and the Fizer and McCauley claim against Fain place, as a prior lien to that of respondents and the other creditors of said Jefferson & Edrington secured by said deeds and contract.

Respondents, upon information and belief, further state that the above herein-described tracts of land, known as the said Witherspoon plantation, was purchased by said J. H. Edrington about February 20th, 1872, by deed from George E. Cooke and wife, which is of record, book 3, page 353, in the register's office of Mississippi county, Arkansas. By said deed a lien was retained by the vendors to secure payment of $12,000.00, evidenced by three notes, $4,000.00 each, due, respectively, one, two, and three years from date.

Respondents are advised that one of said notes has certainly been paid off and discharged by Edrington in his lifetime, and that part, or perhaps all, of the second note has been discharged, but that
77 certainly there is not more than two of said notes of $4,000.00 each unpaid, in favor of George E. Cooke. Said Cooke is here called upon to disclose in his answer the amount still due on said place, and file his notes in this cause for settlement. They make no dispute as to the prior lien of said Cooke for the amount actually due him on the purchase-money of said plantation under his vendor's lien.

Respondents further charge that all of said plantations aforesaid, to wit, the Whitmore, Fain, and Witherspoon are inadequate in value to pay off said trust deed in favor of respondents and the other creditors named in the schedule to said deed of trust and contract and pay off the prior alleged mortgages thereon. The said claim in favor of respondents and other creditors above named amounts to over $30,000.00, including interest, and all three of said plantations are largely inadequate to pay and secure the same, and they are advised that they are entitled to have the rents and profits of all three of said plantations aforesaid *informed* in the court during the pendency of this suit for the payment of their said claims, and to that end to have a permanent receiver appointed, who is disinterested, to rent out said plantations pending this litigation, in the best price or rental possible, and pay over the proceeds under the orders of this court, as in equity they should be, and keep down the taxes on said property.

That unless a receiver be so appointed respondents and the other creditors aforesaid are greatly in danger of losing a great portion of their said claims, and the object of the trust in great danger of being defeated.

Respondents are advised that they are entitled to have said trustee, J. W. Jefferson, bring said trust notes into this court and
78 to have said trust deed foreclosed, and their rights, liens, in, &c., to the said Witherspoon plantation under said contract enforced in a court of equity, and the rights of all parties deter-

mined and settled; to this end that equity may be done between all the parties, and to have said several plantations sold under decree of this court.

Respondents would further state and show unto your honor that at the March term, 1875, of the circuit court of Mississippi county, Arkansas, a consent order was made in this cause appointing John Matthews special receiver for the Whitmore and Fain plantations for the year 1875, with special instructions therein contained, which will fully appear from a certified copy of said order hereto annexed, and he took charge of said plantations in pursuance thereof. They further show that under said order, as appears therefrom, said Matthews was only appointed for 1875, and was given no power or authority except for that year.

They further show that at the September term of said court, 1875, an order was entered in said cause directing said receiver as follows:

"I. That he should make up and file with the clerk of said court monthly statements showing the amount of cotton crop gathered and on hand, and sold, and the price realized therefor, and what [was] done with the funds, to whom said cotton had been shipped, and amounts realized, &c.

"II. That he keep the said crops raised on the Whitmore and Fain plantations separate, apart, and distinct from any other crops, designated by separate and distinct marks, so that in shipping the same for sale to merchants he will have said crop kept separate, and and an account kept of the same distinct from others.

79 "III. That as sale shall be made of said crop and the money realized therefor he shall forthwith deposit the same in the German National Bank of the City of Memphis in his name as receiver in this cause.

"IV. That as soon as said Matthews should realize sufficient to pay five per cent. upon the claims secured by said trust-deed he should pay the same over to them, or such of them as had probated their accounts."

All of which will fully appear from a certified copy of said order.

Respondents state, upon information and belief, that said Matthews has failed to comply with said order. He has not kept, and had not kept, a separate account of said crops of cotton with the merchants to whom he shipped the same distinct from his other crops. He has not deposited the money realized as receiver from said plantations in the German National Bank, nor has he paid over one cent to the creditors or to the credit of said trust fund; and now he comes forward with the astounding assertion that said plantations have realized nothing for the trust fund—which respondents look upon as incredible.

They state the facts to be that said John Matthews is the agent of compl't, Nancy A., the ex'tr'x, and really transacts most of the business of the estate.

They further show that, notwithstanding said property is impounded in this court, and the appointment of said Matthews as re-

ceiver only embraced the year 1875, he has assumed to rent said Whitmore and Fain plantations for 1876, and has advertised
80 said renting to come off on March 1st, 1876, at Osceola, Arkansas, on that day, which is the day after "Mardi Gras" in Memphis; and owing to the holiday and display to be made in Memphis on that day and the gathering of citizens at Memphis on the day and night of February 29th, the day previous to the day appointed for the rental, and the impossibility of parties to be at Osceola at that time, and the fact that many citizens will desire to be absent from Osceola at Memphis, it is a very inopportune time for said renting, and will, if permitted to go on, result in the said plantations being rented for a mere song.

Said advertisement is as follows, to wit:

"*Plantations for Rent at Public Auction.*

"Notice is hereby given that I will, as special receiver in the case of N. A. Edrington, as ex'tr'x of James H. Edrington, deceased, *vs.* J. W. Jefferson *et als.*, now pending in the circuit court of Mississippi county, Arkansas, proceed, at the door of the court-house in the town of Osceola, in said county and State, on Wednesday, March 1st, 1876, to rent the Fain and Whitmore plantations, in said county, containing, respectively, 300 and 400 acres of cleared land for the year 1876 to the highest bidder, at so much per acre, payable on the 15th day of November, 1876, cash rent.

"Notes with approved security will be required, and a lien will be retained on the crops for rent.

"Due attendance will be given by—

"JOHN MATTHEWS,
"*Special Receiver.*

"February 11th, 1876."

Respondents state that they are informed and believe that it is the purpose of said Matthews to rent said places for a nominal amount to some one and really work them himself; and if permitted to do so it will greatly prejudice the rights of the creditors.

81 They state that he is not a proper party to rent the said places. They are informed and believe, and so charge, that said plantations can be rented ten days later, to wit, the 10th of March, to good advantage; that there are plenty of hands and labor on the places, and they can be rented to much better advantage on the 10th of March than on the 1st, and could be made to bring them much more under and in the hands of some one else than on the 1st being rented by said Matthews. And that unless said Matthews be restrained from renting and assuming control of said places for this year the history of last year will be repeated, and the creditors get nothing.

That they are advised that under the circumstances your honor will restrain said Matthews from renting said places and direct the clerk of said court, as temporary receiver, to advertise and rent the same for the year, and hold the rent notes subject to the order of the court in May, when a permanent receiver can be appointed.

They state that this application would have been made sooner but for the impracticability of getting to your honor and giving notice, etc., but there is no time to be lost in renting said places.

Wherefore the prayer of the respondents is that the following named parties be made defendants to this cross-bill, to wit: Nancy A. Edrington, compl'n't, ex'tr'x of James H. Edrington, deceased, and individually; Joshua T. Jefferson, in his own right and as surviving partner of Jefferson & Edrington, and as trustee in contract; John W. Jefferson, trustee in deed of trust, and John Matthews, William Bard Edrington, John P. Edrington, James H. Edrington, Joseph P. Edrington, Sallie Edrington, Eugenia Edrington,
82 Irene (or Rena) Edrington, and Emily Hazard Edrington, or Nancy Edrington, children and infant heirs at law of James H. Edrington, deceased; Charles H. Gaylord, Farrington & Howell, G. W. Gaff & Co., N. Hoffheimer & Co., Chamberlain & Co., H. H. Mette & Son, St. Louis Shot Tower Co., H. Fitzgerald & Co., Amos Munson, Green & Lucas, Woodruff & Co., Ponsill, Wheatley & Co., Oliver, Finnie & Co., B. Lowensteine & Bro., Rutland, Graham & Co., J. Q. Shaw & Co., Hulbert & Reeves, T. P. Davis, E. J. Dupont, G. W. Richards, T. T. Enochs, A. B. Lafonte, Mrs. E. Nunny (Best), A. M. Stewart, E. T. & E. L. Dickinson, Mrs. D. McCam, A. Pearson, Mrs. E. McGinnis, Anderson & Beasley, H. C. Brown, Belmont Nail Works, Zolman Bros., Menken Bros., Mrs. Penelope Fizer, Samuel B. McCauley, Mrs. Emily Hazard, John Hazard, and George E. Cooke. That all of the resident defendants may be served with process herein, and that an order may be published warning all non-residents of the filing of this cross-bill and requiring them as well as all other defendants to answer herein.

That a guardian *ad liten* be appointed for said infant defendants. That attorneys may be appointed, as required by law, for said non-resident defendants. That this answer may be considered as a cross-bill herein. That all of said defendants be required to answer fully, and the creditors of said Jefferson & Edrington, secured by said trust deed and contract, be required to prove their claims herein. That the claims of these respondents, in common with such other creditors of Jefferson & Edrington named in said deed of trust and contract, may be decreed to be charged upon all of said land hereinbefore described in said deed of trust and contract, subordinate only to any prior mortgages not satisfied in any way.

That upon final hearing it be decreed that the said Haz-
83 ard mortgage for $7,000.00, and the said Fizer and McCauley claim on Fain place have been discharged, and subordinate at least, to respondent's claims and liens under the facts of this cause.

That a reference be made to the clerk and master, if necessary to determine the assets due the said creditors, and who hold any prior liens on said land. That such other parties be made as may become necessary. That the amount due each claimant under the said deeds be adjudged to each.

That a receiver be appointed by this court to take charge of and rent out and collect and gather the rents and profits from said Fain

and Whitmore and Witherspoon plantations, pending this suit, subject to the orders of this court in this cause.

And that by final decree in this cause, said trust deed be foreclosed and said contract herein be enforced and foreclosed, and said liens enforced, and said lands sold to pay and satisfy such claims as may be established against the same, and such debts or claims paid from the proceeds thereof. That this may be considered if necessary, as a creditor's bill to settle all liens and matters in dispute as to said lands.

They further pray that an injunction issue restraining and inhibiting said John Matthews from renting said plantations, Whitmore and Fain for 1876, or further meddling therewith. That you appoint the clerk and master of the circuit court at Osceola as temporary receiver herein, to rent all of said plantations for 1876, directing him to take notes for rental thereof, and hold the same subject to the order of this court, at such time as a permanent receiver can be appointed. That he be directed to advertise and rent
84 said places not later than March 10th.

Respondents pray for all such further and additional relief as they may be entitled to in the premises, from time to time, and will ever pray.

ESTES & ELLETT,
MYERS & SNEED,
Sol'rs for Respondents.

85 Mississippi C. Court.

J. W. Jefferson, president of the defendant, the Washington Fire and Marine Insurance Company, makes oath that the facts set forth in the foregoing answer and cross-bill are true; and that he believes the following-named defendants are non-residents of the State of Arkansas, to wit: Nancy A. Edrington, J. T. Jefferson, William Bard Edrington, John P. Edrington, James H. Edrington, Joseph P. Edrington, Sallie Edrington, Eugenia Edrington, Irene (or Rena) Edrington, Emily Hazard Edrington, Farrington & Howell, Chamberlain & Co., H. Hoffheimer & Co., H. H. Wetter & Son, St. Louis Shot Tower Co., Amos Munson, Green & Lucas, Woodruff & Co., Poinsitt, Wheatley & Co., Oliver, Finnie & Co., B. Lowensteine & Bro., Rutland, Graham & Co., J. Q. Shaw & Co., Hulbert & Reeves, E. J. Dupont, G. W. Richards, T. T. Enochs, A. M. Stewart, E. T. & E. L. Dickinson, Mrs D. McCam, A. Pearson, Anderson & Beasley, H. C. Brown, Belmont Nail Works, Zolman Bros., Menken Bros., John W. Jefferson, Mrs. Penelope Fizar, and Samuel B. McCauley, and George E. Cooke, and that the other defendants are residents of the State of Arkansas.

J. W. JEFFERSON, *President.*

Subscribed and sworn to before me this 24th day of February, A. D. 1876.

HUDSON CAREY,
Commissioner for Ark. at Memphis, Tenn.

Com'r's fee, $1.00. Paid by Washington Insurance Co.
Filed February 28th, 1876. J. K. P. HALE, *Clerk.*

86 *Answer of John Matthews to Cross-bill.*

In Mississippi Circuit Court.

N. A. EDRINGTON, as Executrix of J. H. EDRINGTON, Dec's'd, Plaintiff,

vs.

J. W. JEFFERSON *et als.*

John Matthews, one of the defendants in the cross-bill filed by the defendants in the above-entitled cause, states: That he believes it to be true, as stated in said cross-bill, that an extension was given by the creditors therein mentioned, and new notes were given, as stated in said cross-bill, to secure the Washington Ins. Co., the Planters' Ins. Co., Taylor Bro., Appleton, Noyes & Co., J. C. Ward & Co., Orgill Bros. & Co., F. Banksmith & Co., J. J. McCombs, managing partner, etc.; H. Wetter & Co., in the sums mentioned in said cross-bill, all of which have been duly probated in the probate court of Mississippi county, Ark.

Defendant admits the execution and record of the paper, marked Exhibit "A," referred to in the cross-bill by said James H. Edrington, but denies that there was any execution, in law, by the said Nancy A. Edrington, and denies that the legal effect is as stated by said cross-bill.

Defendant admits the execution and record of the trust deed of March 19th, 1874, as stated in said cross-bill, and that the same is properly exhibited as "B." Defendant knows nothing of his own knowledge as to what said J. H. Edrington said about the time of

87 the execution of said deed of trust, but, upon information, denies that he said he had paid off nearly all of the Hazard mortgage upon the Whitmore place, and had perfected arrangements to pay off, and would pay off, the remainder as soon as he could return to Osceola. Defendant admits that the said Exhibit "B" contains a covenant that the said James H. Edrington had paid off all of the purchase-money of the Fain place except the last note of five thousand dollars, in his lifetime, and thinks that the said covenant got into said Exhibit "B" either from criminal intention or misapprehension of the draftsman, and was not authorized by said James H. Edrington.

Defendant denies that said James H. Edrington stated at the time of the execution of said trust deed that he had paid off all the purchase-money for the Fain place, except the last note for $5,000.00, or that he stated that he had the other two notes in his possession, either at his home, in Memphis, or in his safe at Osceola, as stated in said cross-bill. And he further denies that said Nancy A. assented to any such statement, or made search for said second note, as stated in said cross-bill.

Defendant admits that said trust deed was given to secure the said sum of $28,754.21, which is the exact amount of said Edrington & Co. and C. H. Gaylord & Co.'s indebtedness to said firm, which said J. H. Edrington had covenanted by Exhibit "A" to secure. He admits that said Edrington did not remove the incumbrance on the Whitmore plantation, as he had contracted to do, but he denies that

said Nancy A. joined in said contract, or that the same was in any respect binding upon her. He admits that the said Whitmore plantation was not free from incumbrances. He admits that the indebtedness was evidenced by the notes and in the manner as stated
88 in said cross-bill. Defendant admits that the trust deed provides for a sale of the land therein described, and that the money arising from the sale thereof shall constitute a trust fund, to be paid out *pro rata*.

Defendant does not know how much of the indebtednes has been paid by said J. T. Jefferson, but prays that he may be required to disclose the same.

Defendant admits that he and his codefendant, Nancy A., claims that there is about $12,000.00 yet due on said Fain plantation as purchase-money, and they state that said sum of money is now due to Mrs. Nancy A. Edrington in her own right.

Defendant denies that at the time of the execution of the trust deed there was only one $5,000.00 note due to Penelope Fizer and Samuel B. McCauley; but insists that at said time two $5,000.00 notes were due. He denies that one of said two notes had been paid by said J. H. Edrington in his lifetime, and was in his safe at the time of his death. He denies that himself and said Nancy A., or either of them, found said note in the papers of J. H. Edrington after his death, and have set the same up as an incumbrance for purchase-money knowing that the same had been paid off. He asserts that he did purchase said notes from Penelope Fizer and Samuel B. McCauley knowing the same to be for the balance of the purchase-money on said plantation and that he did it with his own money. He denies that he purchased them as agent for Nancy A. Edrington, or with her money. He denies that said purchase was a shrewdly concocted scheme or attempt to defraud and swindle the creditors of Jefferson and Edrington, who were secured by said trust deed, out of $12,000 or $6,000. He denies that it was done in his name as a cloak or cover to conceal the fraud attempted on said creditors. He denies that he had no real pecuniary interest
89 in the transaction, or that he nor Nancy A. never bought but one note from McCauley and Mrs. Fizer. He denies that Nancy A. and himself found one of these notes among the papers of J. H. Edrington and have attempted fraudulently to set it up against the creditors secured by the trust deed. He denies that in all this he has acted as the agent of Nancy A. Edrington, as executrix of J. H. Edrington, deceased, & did not use his own money; or that he acted in that capacity or under the instructions stated in the cross bill.

Defendant admits that he never purchased the Hazard notes and mortgage for himself and with his own money, and he states that he never claimed to do so. He states he purchased the same upon his own suggestion for Mrs. Nancy A. Edrington individually, and with her own money. He denies that he only paid the sum of $7,010.00 for said mortgage, but states that he paid about the sum of $8,000.00 for said claim, the full amount due on said mortgage at the time of the purchase.

Defendant admits that J. H. Edrington died in August, 1874; that he had a large crop of corn and cotton when he died; that after his death said Nancy A. qualified as executrix under his will; that the crop of 1874 amounted to about 682 bales; that some two hundred, or two hundred and fifty, bales of said cotton and their proceeds were assets of said estate; that the gross proceeds of said cotton amounted, with other sums belonging to said estate, to some 15 to 20 thousand dollars, all of which he denies, however, came to the hands of the executrix as assets of the estate for the payment of debts. And he further states, by way of demurrer, that for the crop of 1874 the said Nancy A. was required by law to make settlement with the probate court and that this court has no jurisdiction of said settlement.

90 Defendant denies that at the time said Nancy A. bought said claims or liens against the Fain and Whitmore plantations she had in her hands money or assets properly belonging to said estate more than sufficient to discharge said liens, and he further denies that it would have been her duty to do so if she had such assets. Defendant denies that said Nancy A. had in her hands as executrix of said estate, or otherwise, funds of the estate, a short time after or before said purchase, sufficient for that purpose, which she has never applied to the pay't of the debts against the estate in any legitimate way. Defendant denies that the said assets of the estate of J. H. Edrington were either directly or indirectly used in payment of the Hazard mortgage or claim on the Whitmore place, or in payment of the said Fizer and McCauley claim on said Fain place for purchase-money.

Defendant states the facts in regard to the purchase of the Fizer and McCauley notes to be that, having been immediately upon her qualification as executrix *been* appointed by said Nancy A. her agent to manage the business of the estate for her, as well as to manage all of her private business, he, the said John Matthews, entered faithfully and fully upon the discharge of his duties as such agent. That in December, 1874, or thereabouts, he was approached by Samuel B. McCauley, for himself, and his mother for herself and as guardian of his sister, —— McCauley, and payment of the two $5,000 notes was demanded, with interest due thereon. That said Samuel B. McCauley stated to him that unless the said notes were paid at once he would proceed to enforce his vendor's lien. That

91 he, defendant, then believed that by good management in cultivation of the plantations the estate could be made to pay out; that he regarded the Fain plantation one of the most valuable, and to lose it would certainly cause the estate to prove insolvent. So, after consulting with some intelligent business friends and his lawyer, and without any consultation with the said Nancy A, he determined to pay the two notes himself, and with this view he opened negotiations with McCauley and finally purchased the two notes for their face value, five thousand dollars of which he paid in cash, and gave his note at 30 or 60 days for the remainder. The five thousand dollars he made — the cash payment he borrowed from Brooks, Neely & Co., of Memphis. When

the second five thousand dollars became due he probably obtained an extension of time for 30 days, and before it became due he let Mrs. Nancy A. Edrington have the benefit of his purchase, the notes having been previously assigned to him, and assigned them to her; that Mrs. Edrington paid him back the money he paid, and paid the note to McCauley and Fizer for five thousand dollars with money borrowed from Brooks, Neely & Co., which $5,000.00 she yet owes.

Defendant states in regard to the Hazard claim that Mrs. Edrington bought it with her own private means, and took an assignment of it to herself.

Defendant admits the purchase of the Witherspoon place by James H. Edrington in his lifetime, and making of the deed and retention of the lien by George E. Cook, as stated in said cross-bill, and that one of said notes was paid by Edrington in his lifetime, but denies that any large sum has been paid on either of the other said notes. He admits that $250 was paid as interest to obtain an
92 extension of twelve months. Defendant admits that the Fain and Whitmore places are inadequate in value to pay off the incumbrances held by said Nancy A. and to pay the creditors secured by the deed of trust, and he denies that this court has anything to do with the Witherspoon place.

Defendant admits that he was appointed at the March term, 1875, of this court special receiver for the Fain and Whitmore plantations for that year, and as such took charge thereof, and had no power or authority beyond that year further than that it was his duty to care for the property in his charge. He admits the making of the orders stated at the March term of said court for 1875. He denies that he has failed to comply with said orders. He states that he has marked the cotton with distinct marks, and has kept an account of the same separate and distinct from the other crops.

He admits that the said plantations have made no money for the year 1875, and that there has been no money to distribute to the creditors secured by the deed of trust. He admits that he is the agent of said Nancy A., and as such transacts nearly all of her business. He admits that he advertised said plantations for rent for the year 1876, as stated in said cross-bill. He states that there was to have been held an adjourned term of the circuit court of Mississippi county on the 29th of December, 1875, which was not held; that the judge of said court then set a time early in February, 1876, to be in Memphis to hear some cases there, but did not come; that as the adjourned term was not held in December, 1875, he expected to find the judge in Memphis in February, 1876, to get special instructions as to said year 1876; that by this time it had become pretty well developed that the places would lose money for
93 the year 1875, and he did not wish to carry them on for the year 1876, even if authorized so to do; that he consulted the probate court of Mississippi county, at the January term, 1876, which court advised and directed him to rent the places for 1876; that in February, 1876, he consulted with J. W. Jefferson, president, etc., and his lawyer, D. E. Myers, who agreed that the places ought to be

rented, and the time and all, except that they wanted him to step down and out, and turn the places over to the clerk of the court. He consulted, through John C. Palmer, his attorney, H. T. Ellet, Esq., attorney for J. J. McComb, agent for Am. Cotton Tie Co., who advised him to go on and rent on the first of March. Mrs. Edrington, as holder of the Hazard and Fizer and McCauley claim, certainly had advice in the matter. He denies any intention of renting the places otherwise than fairly.

Defendant further states that it is true, as stated in said cross-bill, that said J. W. Jefferson, president, etc., and his attorney hounded the said Edrington to his death with their arrogances and prosecutions to get him to execute the conveyance, Exhibit "B," to said cross-bill, following him up, when he was incapacitated for business from bodily suffering and disease, and scarcely conscious from opiates, as will be proven on the trial of this cause.

And having fully answered, defendant prays to be hence dismissed.

JOHN C. PALMER,
For John Matthews, Def't.

94 I, John Matthews, being duly sworn, says on oath that *he* believes the statements of the foregoing answer are true.

JOHN MATTHEWS.

Subscribed and sworn to before me this 11th day of April, 1876.

J. K. P. HALE, *Clerk*,
By C. L. MOORE, *D. C.*

Filed May 9th, 1876.

J. K. P. HALE, *Clerk.*
By C. L. MOORE, *D. C.*

95 *Answer of N. A. Edrington to Cross-Bill.*

In Mississippi Circuit Court.

N. A. EDRINGTON, as ex'tr'x, etc., Plaintiff,
against
J. W. JEFFERSON *et als.*, Defendants.

N. A. Edrington, for herself, as executrix of J. H. Edrington, deceased, and as guardian of the minor heirs of J. H. Edrington, deceased, defendants in the cross-complaint filed by the Washington Insurance Company, the Planters' Insurance Company, Taylor & Bro., Appleton, Noyes & Co., J. C. Ward & Co., Orgill Bro's & Co., F. Banksmith & Co., H. Wetter & Co., and J. J. McCombs, managing partner, etc., for answer to the same, says that she adopts the answer of her codefendant, John Matthews, so far as the same goes, and that in addition thereto, for further answer to said cross-complaint, she says that she has no recollection of having ever been called upon by her testator to make the search in said cross-complaint mentioned for the first two of the McCauley and Fizer notes, nor does she believe she was ever so called upon or made such search; and

she further states that she never heard her testator say that said second note had been paid by him, or was in his possession, nor does she believe he ever said so. She further states that during the time the execution of said exhibit "B" was under consideration, nearly some three weeks, she would leave the room in which she was with the testator, when the gentlemen having the same in charge would come, and go into the adjoining room, when she could not hear what transpired, and would so remain until they were about leaving; that during all of said time her testator was suffering great pain, and more or less all the time under the influence of opiates,
96 and would frequently have to be aroused from a sleep produced by said opiates when they would come; that during said time her whole and sole thought was to relieve her husband from suffering, and she herself suffered great torments and distress of mind while he was being worried by these gentlemen; that when she signed the paper she paid no attention to the reading of the contents, and had no thought thereof further than that she was willing to sign anything that would relieve her husband from this harassing arrogance. She further states, in the most positive and unequivocal manner, that the purchase of the Hazard claim, and the McCauley and Fizer claim against the Whitmore and Fain plantations, was made in good faith, with her own money, and for the purpose of benefiting the estate, by preventing the foreclosure and sacrifice of the said plantations, whereby they would be lost to the estate, and for no other purpose, and that no part of the assets of her testator was used in said purchase.

And she prays that the plantations be sold, and the purchase-money applied first to the payment of the preferred liens and then to the payment of the debts secured by the deed of trust, Exhibit "B," together with all proper relief.

JOHN C. PALMER,
For N. A. EDRINGTON, ETC., ETC.

I, N. A. Edrington, being duly sworn, say that I believe the statements of the foregoing answer and the answer of John Matthews in this cause are true.

N. A. EDRINGTON.

Sworn to and subscribed before me this 9th day of May, 1876.

J. K. P. HALE, *Clerk.*
By C. L. MOORE, *D. C.*

Filed May 10th, 1876.

J. K. P. HALE, *Clerk,*
By C. L. MOORE, *D. C.*

97 *Answer of S. B. McCauley.*

In Mississippi Circuit Court. In Chancery.

N. A. EDRINGTON, as Ex'tr'x of J. H. Edrington, Dec's'd,
vs.
J. W. JEFFERSON *et als.*

The answer of Samuel B. McCauley to the cross matter of respond-

ents, The Washington Insurance Company *et als.*, contained in their answer to the original complaint of plaintiff, shows: That the said defendant, Samuel B. McCauley, has no knowledge upon which to form a belief in regard to any of the matters in said cross-complaint contained, except as to the sale of the two notes for five thousand dollars each, executed by the said James H. Edrington in his lifetime, as part of the purchase-money of the Fain place, more particularly described as the northwest quarter of section 36, in township 13 north, of range 10 east; the southwest qr. of section 3, in township 12 north, of range 10 east; and the northwest fr'l qr. of section 31, in township 13 north, of range 11 east; which sale was made by defendant to the said John Matthews in good faith for a valuable consideration. Defendant denies all charges and allegations of fraud and fraudulent combination or concealment, as made in said cross-complaint, or otherwise, in regard to the sale and transfer, and states the facts to be that after the death of said James H. Edrington, and after the maturity of said notes, to wit, about the 3rd day of November, 1874, defendant, for himself and as agent for
98 for his mother, Penelope Fizer (late McCauley), and for his sister, Georgia B. McCauley, went to Memphis, *en route* to Arkansas, with the said two notes in his possession, with a view to placing them for collection. That while in Memphis he met with the said John Matthews, to whom he sold said notes, with the accrued interest, for the sum of ten thousand dollars, payable one-half in cash, and the remainder in 30 days; that the transaction was made by him in good faith; that the notes were in his possession, as they had always been, since their execution, or in the possession of some one holding them for his mother, sister, and himself; that neither of them, or any part of either, had ever been paid by the said James H. Edrington in his lifetime, or by any person for him since his death, and that the sum of each, as shown by the face, with the accrued interest, was then due and unpaid and owing by the estate of James H. Edrington to defendant and his mother and sister; that the transaction took place at the time stated, at the counting-room of Brooks, Neely & Co., in the city of Memphis, in the presence of defendant, John Matthews, J. C. Neely, of the firm of Brooks, Neely & Co., and John C. Palmer, and the transfer was made in their presence; that the deferred payment was met soon after maturity, and the money remitted to defendant by Brooks, Neely & Co., with whom defendant left Matthews' note for collection; and having fully answered defendant prays to be discharged, etc.

JOHN C. PALMER,
For Defendant.

STATE OF TENNESSEE, *County of Davidson:*

99 Personally came and appeared before the undersigned, clerk of the circuit court for the county and State aforesaid, S. B. McCauley, the defendant, who says, on oath, that the statements contained in the foregoing answer are true.

S. B. McCAULEY.

Subscribed and sworn to before me this 26th day of October, 1876. In testimony whereof I have hereunto signed my name as such clerk and affixed the seal of said court, at office in Nashville, the day and year above written.

[SEAL.] NAT. F. DUTCH, *Clerk.*

Filed November 6th, 1876.

[SEAL.] J. K. P. HALE, *Clerk.*

100 *Amendment to Complaint, No. 3.*

In Mississippi Circuit Court.

NANCY A. EDRINGTON, Executrix, *vs.* J. W. JEFFERSON *et als.*

Comes the said plaintiff and asks leave to amend her complaint as originally filed in this cause, as follows; that is to say:

Plaintiff states that she is informed and believes and states that the said defendants, the Washington Insurance Company, are not now, and never have been, a corporation chartered by the laws of the State of Tennessee, as they pretend, and that they had no power or authority to contract with the said James H. Edrington, deceased, or with the said Jefferson & Edrington, and that their contracts and the deed of trust is null and void. And she further states that the indebtedness of the said James H. Edrington and of Jefferson & Edrington to said Washington Insurance Company as sought to be secured by said deed of trust is and was usurious and void. Wherefore, etc.

JOHN C. PALMER,
For Plaintiff.

I, N. A. Edrington, states that I believe the allegations in the foregoing complaint are true.

N. A. EDRINGTON.

Subscribed and sworn to before me this 14th day of November, 1876.

CHARLES BOWEN, *Judge.*

Filed November 14th, 1876.

J. K. P. HALE, *Clerk.*
F. L. JAMES, *D. C.*

101 *Petition, J. W. Jefferson, Trustee, to be Made Compl't to Cross-Bill.*

NANCY A. EDRINGTON, Executrix,
vs.
J. W. JEFFERSON, Trustee, and Others.

Petition of J. W. Jefferson, trustee.

Petitioner would show to the court that he is a citizen of the State of Tennessee; that he is the trustee named in the deed of trust made by James H. Edrington and his wife, Nancy A. Edrington, to

him, as trustee, of date March 19th, 1874, and acknowledged in June, 1874, by said parties, and which was duly recorded in Miss. Co., Ark., about June 17th, 1874, which deed is exhibited in this cause. He states that he is a defendant to the original complaint filed herein.

He now asks the court to be made a party complainant to the cross-bill of the Washington Fire and Marine Insurance Company and others, filed herein February 28th, 1876, as trustee under the said deed in trust, with all the rights to prosecute said cross-bill as though he had been an original party complainant.

J. W. JEFFERSON, *Trustee.*
By W. C. WARRENER & MYERS & SNEED, *Sol-.*

Filed November 15th, 1876.

J. K. P. HALE, *Clerk.*
F. L. JAMES, *D. C.*

102 *Amended Cross-Complaint.*

In Mississippi Circuit Court, Arkansas. In Equity.

NANCY A. EDRINGTON, Ex'tr'x, *vs.* J. W. JEFFERSON & Others.

Now comes the complainants in the cross-bill filed herein on February 28th, 1876, to wit, The Washington Fire and Marine Insurance Company and others, and by leave of the court amend their cross-complaint, as orignally filed herein as follows:

Complainants in said cross-complaint state that since the filing of said original cross-complaint, and but recently, they have learned that Georgia B. McCauley is interested in the Fain plantation, described in the trust deed and pleadings herein, to wit, the northwest quarter of section 36, township 13 north, range 10 east; the northeast quarter of section thirty-six, township thirteen north, range ten east; the southwest quarter of section three (3), in township twelve (12), range ten (10) east, and the northwest fractional quarter of section thirty-one (31), township (13), range 11 east, all situated in Mississippi county, State of Arkansas.

They state that, as they are informed and believe, *that* a part of the legal title to said land is still outstanding in Geogia B. McCauley; and, although she has no real interest in this litigation, she is a necessary party in order to divest title out of her. They state that said Georgia B. McCauley is a minor under 18 years of age, and a resident of the State of Tennessee, and a non-resident of the State of Arkansas, having no regular guardian in the State of Arkansas, known to complainants.

103 Complainants therefore pray that the said Georgia B. McCauley be made a party defendant to said cross-complaint, and that an order may be published warning her of the filing of said cross-complaint, and that she be required to answer the allegations of the same, and that a guardian *ad litem* be appointed to defend for the said Georgia B. ——, unless her singular guardian

shall appear and answer for her, and that an attorney may be appointed, as required by law, for her as a non-resident defendant.

Complainants pray as in original cross-complaint, and that on the hearing the legal title to said above-described land be divested out of her, and vested as decreed by this court.

MYERS & SNEED,
J. B. BEST & H. C. WARRENER,
Sol's for Compl'nts in X-Bill.

STATE OF ARKANSAS, *Mississippi County:*

D. E. Myers, being duly sworn, says that he [is] attorney for the Washington Fire & Marine Insurance Co. and others, compl'ts in the cross-bill herein, all of whom are absent from Mississippi Co., Ark., and that he believes the allegations in the foregoing amended complaint to be true, and that the said Georgia B. McCauley is a non-resident of the State of Arkansas.

D. E. MYERS.

Subscribed and sworn to before me, this 15th day of November, 1876.

Filed November 15th, 1876.

J. K. P. HALE, *Clerk.*
F. L. JAMES, *D. C.*

104 *Orders of Court.*

November Term (15th), 1876, page 328.

NANCY A. EDRINGTON, Executrix, *vs.* J. W. JEFFERSON and others.

In this cause, upon petition and motion of John W. Jefferson, trustee, etc., one of the defendants in the original bill herein, the court doth now adjudge and decree that the said Jefferson, as trustee under the trust deed mentioned in the pleadings in this cause, be made a party complainant to the cross-bill of the Washington Fire and Marine Insurance Company and others filed herein on February 28th, 1876; that he be taken and considered as a complainant herein in the same manner and with the same effect as though he had been originally a party complainant to said cross-bill, and that no amendment to said cross-bill or to the answers filed thereto shall be required by the reason of the making him a complainant therein as aforesaid, but that said cross-bill and the answers thereto shall be taken and stand as though the said Jefferson, trustee, had been originally one of the complainants in the cross-bill.

105 November Term (15th), 1876, page 326.

NANCY A. EDRINGTON, Ex'tr'x, *vs.* J. W. JEFFERSON and others.

In this cause, on motion of the complainants in the cross-bill filed herein on February 28th, 1876, it is ordered and decreed by the court that said cross-bill be dismissed as to the following defendants

named therein, to wit: John W. Jefferson, trustee; J. T. Jefferson, Farrington & Howell, J. W. Gaff & Co., N. Hoffheimer & Co., Chamberlain & Co., H. H. Mette & Co., St. Louis Shot Tower Co., H. Fitzgerald & Co., Amos Munson, Green & Lucas, Woodruff & Co., Coyntz, Wheatley & Co., Oliver, Finnie & Co., B. Lowensteine &Co., Rutland, Graham & Co., J. Q. Shaw & Co., Hurlburt, & Reeves, T. P. Davis, E. P. Dupont, G. W. Richards, T. T. Enochs, N. B. Laforte, Mrs. E. Numary Best, A. N. Stewart, E. T. & E. L. Dickinson, Mrs. D. McCase, A. Pearson, Mrs. E. McGinnis, Andrews & Beasley, H. C. Brown, Belmont Nail Works, Zelman & Bro., Menken Bros., leaving as the remainder of the defendants the following persons, to wit: Nancy A. Edrington individually and as executrix of the estate of James H. Edrington, deceased; John Matthews, Wm. B. Edrington, John P. Edrington, James H. Edrington, Joseph C. Edrington, Eugenia P. Edrington, Irene (or Rena) Edrington, Emily Hazard or Nancy E. Edrington, Penelope Fizer, individually and as guardian; Samuel B. McCauley, Charles H. Gaylord and George E. Cooke, Emily Hazard and John H. Hazard.

106 *Petition and Bond for Removal to U. S. Circuit Court.*

STATE OF ARKANSAS, *County of Mississippi:*

In the Circuit Court of Mississippi County. In Equity.

To the Hon'l L. L. Mack, judge of the circuit court of the county and State aforesaid, sitting in equity:

The petition of John W. Jefferson, trustee, etc., and Joshua T. Jefferson, citizens and residents of the State of Tennessee; The Washington Fire and Marine Insurance Company, a corporation having its domicile at Memphis, Tennessee, and created by the laws of that State, and a citizen of said State of Tennessee; The Planters' Insurance Company of Memphis, Tennessee, a corporation created by the laws of Tennessee, and having its domicile and place of business at Memphis, Tenn., and a citizen of said last-named State; James J. McComb, managing partner of the American Cotton Tie Company, and a citizen and resident of the State of Louisiana; Appleton, Noyes & Co., a firm composed of George D. Appleton, Nathan D. Noyes, and John B. Maude, doing business in St. Louis, Missouri, and citizens and residents of that State: J. C. Ward & Co., a firm composed of J. C. Ward and J. Frayser Holst, doing business at Memphis, Tennessee, and citizens and residents of that State; Taylor & Bro., a firm composed of Wm. W. Taylor and L. L. Taylor, doing business in the State of Ohio, and citizens and residents of that State; F. Banksmith & Co., a firm composed of F. Banksmith, doing business in Memphis, Tennessee, and a citizen and resident of said State; Orgill Bros. & Co., a firm composed of Edmund Orgill,
107 G. L. Dennison, Jno. T. Wilkins, and A. S. McNear, doing business at Memphis, Tennessee, and all citizens and residents of said State, except Samuel Orgill, who is a citizen and resident of the State of New York; and H. Wetter & Co., a firm composed of

H. Wetter and George Schumalzried, doing business at Memphis, Tennessee, and citizens and residents of said State, respectfully show unto the court:

That a suit was brought and is now pending in the circuit court of Mississippi county, State of Arkansas, in equity, by Nancy A. Edrington, executrix of James H. Edrington, deceased, against said John W. Jefferson, trustee; J. T. Jefferson, and others, to which suit your remaining petitioners also were afterwards made parties, the said Nancy A. Edrington being then and now a citizen and resident of the State of Arkansas, and the defendants therein being citizens of the State of Tennessee, except some nominal and formal parties therein, to wit, John Matthews, Emily R. Hazard, and John H. Hazard, adm'r, &c., who are citizens and residents of the State of Arkansas. That your petitioners, except the said Joshua T. Jefferson, filed a cross-bill in said cause against the said Nancy A. Edrington, individually and as said executrix; John Matthews, and the children and heirs of said James H. Edrington, all of whom are citizens and residents of the State of Arkansas, and also against others as formal parties, some of whom may be citizens of other States than the State of Arkansas. That the said original bill of Nancy A. Edrington, executrix, &c., has been dismissed as to one of the defendants therein, viz., Geo. W. L. Crooke, and that your petitioners, the said John W. Jefferson, trustee, and Joshua T. Jefferson, are the only remaining defendants therein, who are citizens of the State of Tennessee, the others, to wit, John Matthews and the formal defendants, Emily R. Hazard and John H. Hazard, adm'rs, being citizens of Arkansas, as aforesaid.

108 That said suit cannot and could not be tried at the present term of this court, as the same is not yet ready for trial or in a condition to be tried. That the matter in dispute in said suit exceeds, exclusive of costs, the sum or value of five hundred dollars. That the petitioners are citizens and residents of the States of Tennessee, Louisiana, Missouri, and New York, as hereinbefore set forth, and that the said Nancy A. Edrington, John Matthews, and the children and heirs of James H. Edrington, deceased, are citizens and residents of the State of Arkansas, as aforesaid, and that in said suit there is a controversy wholly between petitioners and the said Nancy A. Edrington individually and as said executrix, John Matthews, and the children and heirs of James H. Edrington, deceased, which can be fully determined as between them without the presence of the other parties.

Petitioners therefore present herewith and file a bond, as required by law and under the acts of Congress and conditioned according to their provisions, and pray for the removal of the said suit, including the original and cross-bills, into the circuit court of the United States

for the western district of Arkansas, at Helena, in said State; and they will ever pray, etc.

JOHN W. JEFFERSON, *Trustee.*
JOSHUA T. JEFFERSON,
J. J. McCOMB,
THE WASHINGTON FIRE & MARINE INS. CO.,
THE PLANTERS' INS. CO. OF MEMPHIS, TENN.,
APPLETON, NOYES & CO.,
J. C. WARD & CO.,
TAYLOR & BRO.,
F. BANKSMITH & CO.,
ORGILL BROS. & CO.,
H. WETTER & CO.,
Petitioners, etc.,
By MYERS & SNEED,
J. B. BEST,
WARRINNER & LEE,
ESTES & ELLETT, *Sol'rs.*

MYERS & SNEED.
J. B. BEST.
ESTES & ELLETT.
WARRINNER & LEE.
SMITH & COLLIER.

109 STATE OF ARKANSAS, } *ss:*
Mississippi County, }

D. E. Myers, one of the attorneys for the petitioners, who are now absent from Mississippi county, —, and that affiant believes the statements of the foregoing petitions are true.

D. E. MYERS.

Sworn to and subscribed before me this 16th day of November, 1876.

J. K. P. HALE, *Clerk.*
By H. R. McVEIGH, *D. C.*

110 *Bond.*

Know all men by these presents that we, John W. Jefferson, trustee; Joshua T. Jefferson, the Washington Fire and Marine Ins. Co., The Planters' Ins. Co., of Memphis, Tenn.; J. J. McComb, managing partner of The American Cotton Tie Company; Appleton, Noyes & Co., J. C. Ward & Co., Taylor & Bro., F. Banksmith & Co., Orgill Bros. & Co., H. Wetter & Co., as principals, and W. P. Hale, F. B. Hale, and F. R. Lanier, as securities, are held and firmly bound unto Nancy A. Edrington, John Matthews, Wm. B. Edrington, John P. Edrington, Joseph P. Edrington, James H. Edrington, Sallie Edrington, Eugenia Edrington, Irene or Rena Edrington, and Emily Hazard or Nancy E. Edrington in the sum of five hundred dollars, subject to the following conditions, which are, that whereas the

above-bound principals now file their petition in the circuit court of Mississippi county, Arkansas, in equity, in a suit therein pending, wherein the said Nancy A. Edrington, executrix, etc., is complainant and the above-named John W. Jefferson, trustee; Joshua T. Jefferson, and others are defendants, and in which cause the above-named parties principal, except Joshua T. Jefferson, have filed a cross-bill against said Nancy A. Edrington, as executrix, etc., and individually, and against John Matthews and others, the purpose of which petition aforesaid is the removal of said cause into the circuit court of the United States for the western district of Arkansas, sitting at Helena, in said State: Now, therefore, if the above-named bound principals shall enter in the said circuit court on the first day of its next session a copy of the record of such suit, and will pay all costs that may be awarded by said circuit court if said court shall hold that such suit was wrongfully or improperly removed
111 thereto, and will enter their appearance in such suit, then this obligation to be void; otherwise to remain in force.

Dated the 16th day of November, 1876.

JOHN W. JEFFRSON, *Trustee.*
JOSHUA T. JEFFERSON,
THE WASHINGTON FIRE & MARINE INS. CO.,
THE PLANTERS' INS. CO. OF MEMPHIS,
JAMES J. McCOMB, *Manager, etc.*,
APPLETON, NOYES & CO.,
J. C. WARD & CO.,
TAYLOR & BRO.,
F. BANKSMITH & CO.,
ORGILL BROS. & CO.,
H. WETTER & CO.,
By MYERS & SNEED,
J. B. BEST, WARRINNER & LEE,
Solr's for Petitioners.

W. P. HALE.
F. B. HALE.
FELIX R. LANIER.

Sureties justified and bond accepted and satisfactory.

J. K. P. HALE, *Clerk*,
By H. R. McVEIGH, *D. C.*

This 16th day of November, 1876 (above petition and bond fastened together and endorsed).

Filed November 16th, 1876, at fifteen minutes after four o'clock, p. m.

J. K. P. HALE, *Clerk*,
By H. R. McVEIGH, *D. C.*

112 *Removal from Mississippi Circuit Court.*

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

In the Circuit Court for the Eastern District of Arkansas. March Term, 1877.

NANCY A. EDRINGTON, as Ex'tr'x, }
vs. } 1472.
J. W. JEFFERSON and others. }

The said plaintiff moves the court to remand this cause to the State court, from which it came for want of jurisdiction in this court, to try and determine the same for these:

1st. As appears by the record, one portion of the cause, without the determination of which no final decree can be made in this court, has been decided in the State court, and is now pending on appeal on the supreme court of the State of Arkansas.

2nd. It does not appear that said cause was removed at or before the first term of said State court at which said cause might have been first heard and determined.

J. C. PALMER & ADAMS,
DIXON & ADAMS,
For Pl'ff.

Endorsed thereon: Filed March 14, 1877. S. P. Delatour, clerk. And also, filed January 13, 1885. Hugh R. McVeigh, clerk, by G. A. Bolick, D. C.

113 *Answer and Demurrer of W. F. & M. Ins. Company.*

NANCY A. EDRINGTON, Ex'tr'x of Jas. H. Edrington,
vs.
J. W. JEFFERSON *et al.*

The separate answer of the defendant, the Washington Fire and Marine Insurance Company, to the amended bill of complaint filed herein, filed Nov. 14th, 1876.

This respondent, saving unto itself all manner of exceptions which can or may be taken to the irregularity and insufficiency of said amendment and amended bill, for answer to so much thereof as he is advised is material or necessary for it to make answer unto, says:

It denies the allegation in said amendment "that it is not now and never has been a corporation chartered by the laws of the State of Tennessee, or that it had no power or authority to contract with the said J. H. Edrington, deceased, or with Jefferson and Edrington." It denies "that the deed of trust is and was void."

But, on the contrary, the defendant states and avers that its charter was duly granted by the Legislature of the State of Tennessee, as will fully appear by a certified copy of said charter, which will be filed herewith, marked Exhibit "A," and made part of this answer. That in pursuance of said charter granted by the Legisla-

ture of the State of Tennessee, the capital stock to said corporation was duly subscribed and the requisite amount paid in, in strict compliance with the provisions of said charter, and that this corporation was duly organized in pursuance of the provisions of
114 said charter, and have so conducted and carried on business thereunder ever since its reorganization, which was recently had.

Respondent further answering states that the said firm of Jefferson & Edrington, of which complainant's testator, J. H. Edrington, was a member, were stockholders in said corporation; that said firm contracted with said corporation, borrowed money from it, and gave promissory notes as evidence of the same to said Washington Fire and Marine Insurance Company, and recognized and treated said corporation as a valid and subsisting corporation regularly organized, treated with it as such and borrowed its money as such, gave notes for the payment of the same to it, in its corporate capacity.

And respondent states that it is advised and believes that said Jefferson & Edrington and the said J. H. Edrington, one of the members of said firm, and his representatives and heirs and agents are estopped to deny the fact that said corporation was duly chartered by the State of Tennessee, or that it was duly organized under its charter, and was a valid existing corporation, and defendant pleads and relies upon said estoppel against complainant, as a full and complete answer and defense to said allegation under the facts in this cause, and it relies on said defense the same as though it was specially pleaded. Respondent, further answering, denies that the indebtedness of the said J. H. Edrington and Jefferson & Edrington to said Washington Fire & Marine Insurance Co. is, and was usurious and void; on the contrary it denies that there was any usury whatever contained in said transaction—that no interest was charged except the legal rate.

115 Respondent further states that said transaction was made in the State of Tennessee, the money borrowed there, and the firm of Jefferson & Edrington did business there although said J. H. Edrington resided in Arkansas. That under and by virtue of the laws of the State of Tennessee in force at the time said transaction was made it was lawful that parties might take, reserve, and charge interest at the rate of ten per cent. per annum, "Provided the rate of interest be in writing and expressed in the face of the instrument creating the obligation;" and respondent further avers that in these loans and transactions it only charged ten per cent., and that rate was always expressed in writing in the note or obligation, and it is further provided by the laws of the State of Tennessee, in force at the time of said transactions, and still in force, that if any person shall contract for a greater rate of interest than ten per cent. per annum as herein provided, it shall operate as a release of the debtor from all interest in excess of six per cent.; this was the only penalty prescribed; in other words, the creditor would recover the debt and legal interest, the usurious part alone can be rebated.

But respondent further states under the laws and in accordance

with the statutes passed by the Legislature of the State of Arkansas and in force at the time all these transactions were made, and in full force on the 19th day of March, 1874, and June 1874, the date of the execution of the notes executed by Jefferson & Edrington to said Washington Fire & Marine Insurance Company set out in said trust deed executed by J. H. Edrington and complainant, Nancy A. Edrington, and at the date of said trust deed, and at the date of its execution and registration of the same, and the date of the filing of the original bill herein, no "plea of usury nor defense founded upon any allegation shall be sustained in any court of said State of Arkansas, nor shall any security be held invalid on any allegation of usury when the rate of interest reserved, discounted, or taken does not exceed the laws of this State in consequence of such security being payable in a State, kingdom, or country where such rate of interest is not allowed.' It is further provided by the laws and statutes under acts of the Legislature of the State of Arkansas in force at the date of all these notes, transactions, trust deed, and execution thereof, that it shall be lawful for any parties to loan money, to take, reserve, or discount interest upon any note, bill, bond, acceptance, or other commercial paper, mortgage, or other securities at any rate of interest stipulated or agreed upon by the parties, whether the same be payable in said State or any other State, kingdom, or country; that all such notes, bills, drafts, acceptances, or other commercial paper, mortgage, or other securities shall be held valid in this (State of Arkansas) or elsewhere, by reason of which complainant is not permitted to raise, offer, or rely upon the defense of usury in this case. And having fully answered, defendant prays that this answer may be taken and considered as a special demurrer to complainant's said amended bill of complaint, filed Nov. 14th, 1876, and that it have the same effect. And for specific causes of demurrer defendant shows the following:

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117 I. Because that part of said amendment, which charges that this defendant was never chartered as a corporation under the laws of Tennessee, is insufficient in law, in this, because the will and record shows that complainant's testator contracted with the defendant, Insurance Company, and gaves his notes to it, and treated it as a valid corporation, hence cannot be permitted now to dispute it or deny its existence.

II. Defendant also demurs specifically to all that part of the said amendment which charges that the contract between Jefferson & Edrington and J. H. Edrington and defendant was usurious, because under the laws of the State of Arkansas in force at the time all these transactions were made between them, and when said — was brought no defense of usury could be set up or relied on in the State of Arkansas by complainant in her testator, etc.

Because said amendment doth not state the amount of usury claimed to be contained in said transaction, nor does the offer to pay into court or to defendant the amount of the debt for the usury, etc.

Defendant prays that these causes of demurrer may also be con-

sidered by the court, and judgment made therein the same as if no answer had been filed.

Defendant having fully answered, prays, etc., etc.

MYERS & SNEED,
Sol's for Defendant.

WASHINGTON FIRE & MARINE INS. CO.,
[SEAL.] By J. W. JEFFERSON, *Pres't.*

118 STATE OF TENNESSEE, *Shelby County:*

Personally appeared before me the undersigned United States commissioner, J. W. Jefferson, president of the Washington Fire and Marine Insurance Company, who makes oath that the facts set forth in the foregoing answer are true to the best of his knowledge and belief.

J. W. JEFFERSON.

Subscribed and sworn to before me this 13th day of March, 1877.
HUNDON CAREY,
U. S. Commissioner, Dist. of West Tennessee.

Com. fee, $1.00. Paid by plaintiff.

Endorsed thereon: Filed March 14th, 1877. S. P. Delatoar, clerk; and also filed January 13th, 1885. Hugh R. McVeigh, clerk, by G. A. Bolick, D. C.

119 *Answer of Washington Fire and Marine Insurance Co. and others to Petition of Brooks, Neely & Co.*

In the Circuit Court of the United States for Western District of Arkansas, at Helena.

NANCY A. EDRINGTON, Executrix, etc., *vs.* J. W. JEFFERSON *et al.*

The joint and several answers of the Washington Fire and Marine Insurance Company, The Planters' Insurance Company, Appleton, Noyes & Co., J. C. Ward & Co., F. Banksmith & Co., H. Wetter & Co., Taylor & Bros., Pointer, Wheatley & Co., Orgill Bros. & Co., J. W. Gaff & Co., J. J. McComb, surviving partner American Cotton Tie Co.; Woodruff & Co., Fitzgerald & Co., H. H. Mette & Co., Farrington & Howell, Colton Greene, and Menken Bros. to the petition and claim of Brooks, Neely & Co., and W. P. Hale, trustee, filed in this cause about November 13, 1876.

These respondents, jointly and severally respectfully saving and reserving unto themselves all manner of exceptions which can or may be had or taken to the many irregularities, imperfections, etc., in said petition and cross-claim contained, for answer thereto, or unto so much thereof as they are advised is material or necessary for them to make answer unto, say: They admit that on the 1st day of January, 1873, the said James H. Edrington, in his lifetime, purchased from Mrs. Penelope Fizer, individually

and as guardian of Georgia B. McCauley and of Samuel
120 B. McCauley, the Fain plantation in Mississippi county, Arkansas, and they suppose the description of said land is correctly set out in the petition, but they reserve the right to correct said description if in the progress of the cause they find that, as stated, to be inaccurate, and the said Edrington paid at the time of said purchase $5,000.00 cash in hand, and gave his note for residue of purchase-money as follows: $5,000.00 to be paid on the first day of January, 1874, and one for $5,000.00 due on the 1st day of January, 1875, both notes of date January 1st, 1873. And they admit that the said Penelope Fizer, for herself and as guardian for Georgia B. McCauley, executed to the said James H. Edrington a bond for title to said lands and plantation, covenanting to execute to him, Edrington, his heirs and assigns, a good and sufficient title to said land upon payment of said purchase-money, as set out and shown in said title bond, Exhibit "A," to said petition and complaint, which respondents believe to be correctly copied and set out by petitioners, but they reserve the right to file a correct copy of said title bond if Exhibit A should be discovered to be incorrect. They admit that said James H. Edrington went into immediate possession of said plantation after the purchase, and *so had* held possession of by him or those claiming under him ever since, *as* still so held.

Respondents admit that said James H. Edrington departed this life about August 12th, 1874, after having paid off one installment of five thousand dollars, but upon information and belief they deny that he left two notes for five thousand dollars each, still unpaid;
on the contrary, on information and belief, they aver that at
121 the time of the death of said Edrington he had tendered the first installment of five thousand dollars paid on said purchase-money at time of purchase, paid off the five thousand dollars maturing January 1st, 1874, leaving only the sum of five thousand dollars, to wit, one note due on the 1st of January, 1875, due on said purchase to said Fizer and McCauley.

Respondents deny that there were two notes for $5,000 each due at the death of said Edrington for purchase-money of said Fain plantation payable to Penelope Fizer, and as guardian of Georgia B. McCauley and Samuel B. McCauley, dated January 1st, 1873, due, respectively, at twelve and twenty-four months after date, etc.; but, again, upon information and belief, they deny that there was but one of said notes due at the death of said Edrington. They admit that the said Nancy Edrington duly qualified as executrix of the estate of said James H. Edrington, deceased, in the probate court of Mississippi county, Arkansas. Respondents deny that Penelope Fizer and S. B. McCauley, on the 3d day of November, 1874, sold and assigned said *land*, two notes, due at 12 and 24 months from date, each for five thousand dollars, for a valuable consideration. On the contrary, they are informed and believe that there was but one of said notes unpaid at the time in fact; but however this may be, or turn out in the proof, respondents deny, upon information and belief, that said John Matthews ever bought these two notes, or

either one of them, for himself. They deny that both of said notes were purchased by said Matthews Nov. 3rd, 1874. Respondents are informed, believe, and so state, that at that time, Nov. 3, 1874, the said John Matthews was the agent and
122 business manager of the said Nancy A. Edrington as executrix, and attending to her affairs and that of the Edrington estate, as such agent of said executrix, and that as such he pretended to purchase said notes, or one of them, from the McCauleys, but in truth and fact the transaction was really made for the said Nancy A., as executrix, and with means furnished by her for that purpose, and that the transaction, so far as it was in the name of the said Matthews, was a subterfuge and not a real transaction, but was intended fraudulently to cover up the real transaction, for the purpose, on the part of the said Nancy A., to derive some supposed advantage from the transaction.

Respondents state upon information and belief that in November and December, 1874, and January, 1875, the said Nancy A. Edrington, as executrix aforesaid, had received into her possession a large amount of money and assets of the estate of her said testator, James H. Edrington, to wit, many thousand dollars, consisting of the cotton crop of 1874, belonging to said estate, and monies, etc., and the money arising from the sale of said cotton crop, amounting in the aggregate to some $25,000 or $30,000.00, and perhaps $40,000.00, which she had on hand, as executrix, at the date of these alleged transactions and pretended purchase of the McCauley notes, and had not applied it to the payment of the debts of said estate, nor has she yet.

Respondents show that said pretended purchase of said notes was in fact made for said Nancy A. Edrington, and every dollar that was ever paid thereon was paid by her in fact directly or
123 indirectly, or by means furnished by her as executrix.

They are informed, believe, and so state, that said Nancy A. paid for the said notes or note with the funds, monies, and assets of the said estate of J. H. Edrington, which had come to her hands as executrix. They further state, on like information and belief, that even if the said Matthews first purchased said notes, and afterwards sold and transferred the same to the said Nancy A., as alleged, in February, 1875 (which they deny), yet they charge that at the time she, as executrix aforesaid, had monies in her hands belonging to said estate more than sufficient to pay off said notes, to wit, $25,000.00 or more, of money and personal assets. They, upon like information and belief, charge that the said Nancy A. Edrington, executrix, and the money drawn by her for the purpose of paying for said notes were actually charged upon account, as executrix, upon the books of his commission merchants, Brooks, Neely and Co., petitioners.

Respondents further state that they are advised that even if the said Nancy A. had actually used her individual money in the payment of these notes as claimed, to put the case in the best light possible for her, it would present the remarkable feature of an executrix and trustee speculating in the claim against her testator's estate,

and that, too, when she had in her hands ample monies and assets of said estate to pay off and discharge said claim. They are advised that such transactions will not be permitted to stand.

Respondents are advised and believe, and so state, said notes
124 or note for the balance of the purchase money of the Fain plantation described in said petition, and the lien upon said land for their payment became, in law and equity, discharged and paid off. So soon as they were taken up and came into the possession of said Nancy A., executrix, under the facts of this case, and they were no longer a claim or valid lien upon said land as against said estate after they were taken up by said executrix thereof, the said Nancy A.

Respondents further state, upon information and belief, the facts to be that at the time negotiations were going on between these respondents, or some of them, and about the time the trust deed was executed by said James H. Edrington and wife, Nancy, to J. W. Jefferson, trustee, upon said Fain plantation described in said petition herein, to secure this respondent the large debt due from Jefferson & Edrington, and J. H. Edrington to them, which trust deed bears date March 19th, 1874, and was acknowledged about June —, 1874, which is exhibited with complainants' said bill. The said James H. Edrington stated that said purchase-money of the Fain plantation was all paid off except the last note, due January 1st, 1875, and stated that he had the said note, due January, 1873, and being called upon to produce said note he looked for it, and called in his wife, the said Nancy A., to look for it, which she did, and failed to find it, and said J. H. then said it was in his safe, at Osceola; and he then appealed to his wife, the said Nancy A., to know if said note was not paid off, and she answered in the affirmative, and respondents were then induced to extend these debts against said Jefferson & Edrington for a long term, and accept the security embraced in said trust
125 deed upon the assurance that there was but one five-thousand-dollar note due for the purchase money of said plantation, and that no incumbrance would remain on [illegible], which they would not have done if they had known that there were two notes for five thousand dollars each still unpaid on said Fain plantation; and they further state that there is a covenant in said trust deed, which is hereby referred to and made part of this answer, made jointly by said James H. and Nancy A. Edrington; that there was only one note for five thousand dollars still unpaid on said Fain farm, and respondents say that the said Nancy A. is estopped by her said deed to set up that there was more than one note unpaid to Penelope Fizer, as guardian, and Samuel B. McCauley on said place, and that she will not be permitted to set up in any event more than one note by reason of this estoppel by deed; that said Nancy A. is also estopped by the facts to set up either one of said notes as against the beneficiaries in said trust deed to J. W. Jefferson, trustee, and that by her action in assisting to induce respondents at the time of taking said trust deed to J. W. Jefferson, trustee, to take said lien she estopped to set up in her own right or otherwise certainly more than one of said notes; and respondents insist that by this and other

facts in the case she cannot and would not be permitted to set up either of said notes as a lien on said property; but, however, these respondents charge that no matter how these notes and transactions were manipulated and covered up, that said notes were paid, whether one or two, either directly or indirectly, out of the funds of
126 the estate of J. H. Hedrington that had come into the hands of said Nancy A. as executrix aforesaid, and that the same was charged on her account, as executrix of said James H., on the books of petitioner, Brooks, Neely & Co., her merchants; that if she had any individual means to her credit on said account as executrix it was a very small amount; but respondents, on information and belief, deny that she had a dollar more than she drew individually over and above any amount paid on said McCauley notes for purchase money on said plantation.

Respondents, upon information and belief, further show that, besides the cotton crop of 1874 belonging to said estate, which came into her hands as executrix, amounting to some forty thousand dollars or more—the exact amount not known—said Nancy A. had collected large sums of money from other sources in the way of debts due said estate, besides a large amount of other personal property which he had converted and had reduced to possession, also an interest in a store and stock of goods at Osceola, Ark., altogether amounting to many thousand dollars, all of which she had in her possession at the time the alleged negotiations and purchase of the McCauley notes aforesaid, and none of which, at least but a small amount of which, she has ever accounted for or paid out legitimately in the administration of said estate, but the same, or the most of it, is still retained by her, and they insist that she would not be permitted to hold these notes as a lien on said property at all, but certainly not without fully accounting for the moneys and property of said estate that came to her hands.

127 Respondents further say they cannot either admit or deny, for want of certain information, whether said notes were in November, 1874, or February, or any other time in 1875, in the trust taken by Brooks, Neely & Co. as collateral security for money advanced on them or not, but they call for strict proof of all such allegations; but they are informed and believe, and so state, that no matter how this was done, in that these notes were finally paid by said Nancy A.—most of them, if not all—out of the funds of the estate of J. H. Edrington, and charged upon the books of Brooks, Neely & Co. upon her account as executrix aforesaid, when she had ample means of the estate in her hands as executrix to pay the same, and all of these facts were well known to petitioners, Brooks, Neely & Co., at the time.

Respondents, further answering, say that they admit the trust deed of March 13th, 1875, made by Nancy A. Edrington to W. P. Hale, trustee, to secure certain advances to be made to said Nancy A., etc., and that said two McCauley notes are named as conveyed therein to said Hale as trustee, which will fully appear from said trust deed. But these respondents, upon information and belief, state and charge that at the date of said trust-deed said notes had

been fully paid, and all advances claimed by Brooks, Neely & Co. upon them had been fully paid off and settled in the account of said Nancy A., executrix, on the books of the firm of Brooks, Neely & Co., and that in fact at the date of said trust there was, perhaps, a balance to the credit of said Nancy A., ex'tr'x, with Brooks, Neely & Company for a considerable amount; that said notes were
128 both past due at the date of said trust deed, April 13, 1875, and both had been paid off and were in the hands of the said Nancy A., ex'tr'x, as aforesaid; that all these facts and circumstances of the payment of said notes, and by whom, and that Nancy A. was the ex'tr'x of said James H. Edrington, deceased, was well and fully known to Brooks, Neely & Co. in its every detail, for they were her merchants in Memphis, and kept these accounts and these transactions with her, and had full notice of the whole affair; that Brooks, Neely & Co. have no higher rights than the said Nancy in those two notes—they took them subject to all equities as against her—in favor of respondents or other creditors, and must abide her title and claim to said notes.

Respondents further show that said trust-deed, of date April 15th, 1875, Ex. "D" to petition, conveyed a large amount of other property in trust to secure Brooks, Neely & Co. in the said contemplated advance, and that in any event they will be required to first exhaust the other property therein contained before going upon these notes or enforcing the collection of the same.

Respondents say that they do not know what amount of debt is claimed by Brooks, Neely & Co., as the petition fails to disclose the amount, but they do not admit that there is anything due them under said trust-deed, and call for strict proof on this point.

Respondents deny said notes of J. H. Edrington to McCauley, and given [as] aforesaid, constitute any lien on the said Fain plantation in the hands of Brooks, Neely & Co. or Nancy A. Ed-
129 rington, and they deny that said Brooks, Neely & Co. are entitled to have satisfaction for their claim against Nancy A. out of the proceeds of the sale of said Fain plantation, either by virtue of said notes or the said trust-deed from Nancy A. conveying them to W. P. Hale, trustee, for their benefit, or under any other circumstances or state of facts.

But, upon advice and belief, they aver that said two notes, when taken up by said Nancy A., became extinct and paid, and could no more be enforced or put in circulation by assignment, or otherwise, to any one, nor could they be enforced as a lien by the said Nancy A., either individually or otherwise.

Respondents here deny all other allegations in said petition not herein specificially denied, admitted, or traversed

And having fully answered, they pray that said two notes for purchase-money of Fain plantation be declared to be no lien on said land, either in hands of Brooks, Neely & Co., or any one else. And that they be decreed to be canceled and null, and of no further

virtue or force; that said petition be dismissed, etc., and will ever pray.

MYERS & SNEED,
WARRINNER & LEE,
SMITH & COLLIER,
TAPPAN & HORNOR,
Sol'rs for Respondents.

130 NANCY A. EDRINGTON, as Executrix of the last Will and Testament of James H. Edrington, Deceased, Complainant,

vs.

J. W. JEFFERSON, J. T. JEFFERSON, G. W. L. CROOK, JOHN MATHEWS, and Emily R. Hazard, and John H. Hazard, as Administrator of James H. Hazard, Deceased, and others, Defendants.

Now, on this day, come the parties complainant and defendants herein, by their solicitors, and the court being sufficiently advised of what decree to render in this cause, which was argued and submitted to the court at the last term of this court, on the original bill and the amendments to said original bill, the answers to said original bill and amendments and replication thereto, and cross-bill and amended and supplemental cross-bill of defendants, the Washington Fire and Marine Insurance Company, The Planters' Insurance Company, George D. Appleton, Mathew D. Noyes, and John B. Maude, composing the firm of Appleton, Noyes & Co.; J. C. Ward and J. H. Holst, composing the firm of J. C. Ward & Co.; William W. Taylor and L. L. Taylor, composing the firm of Taylor Bros.; F. Banksmith, composing the firm of F. Banksmith & Co.; J. J. McCombs, managing partner of the American Cotton Tie Company; Edmund Orgill, G. L. Dennison, John T. Williams, and A. L. McKeen, composing the firm of Orgill Bros. & Co.; H. Wetter and George Schmaly, composing the firm of H. Wetter & Co., and answers thereto, the cross-bill of Brooks, Neely & Co. and answers thereto, and the cross-bill of J. D. Driver and answers thereto, replications to answers, exhibits, and proofs: It is therefore ordered, adjudged, and decreed by the court that the original and amended bills of complainant,

131 Nancy A. Edrington, as executrix of James H. Edrington, deceased, be and the same are hereby, dismissed, and that the cross-bills of said Brooks, Neely & Co. and said J. D. Driver be, and the same *is* hereby, dismissed. And it is further, ordered, adjudged, and decreed by the court that James H. Edrington, deceased, in his lifetime was indebted to John W. Jefferson, trustee, in the sum of twenty-eight thousand seven hundred and fifty-four dollars and twenty-one cents, which debt was evidenced by nine promissory notes, all dated March 16, 1874, to wit: One for $3,281.19, payable November 15, 1874; one payable Jan. 15, 1875, for $3,281.89; one payable March 15, 1875, for $3,281.89; one payable May 15, 1875, for $3,281.89, said notes being signed by J. H. Edrington, and bearing 8 per cent. interest from maturity until paid; also five other promissory notes as follows: One for $2,656.66, payable Nov. 15, 1874; one payable January 15, 1875, for $2,656.66; one payable

March 15, 1875, for $2,656.66; one payable May 15, 1875, for $2,656.66, and one payable November 15, 1875, for $5,000.00, said promissory notes made by J. H. Edrington and C. H. Gaylord, and bearing 8 per cent. interest from date until paid; that said debt is now due and wholly unpaid, and that the same is a lien upon the following-described land, situate, lying, and being in the county of Mississippi and State of Arkansas, to wit: The southwest quarter of section 30, in township 13 north, range 11 east; the south half of section 25, the south half of section 26, the southwest quarter of section 34, all in township 13 north, range 10 east, containing in all 902 acres, and known as the Whitmore plantation; also the following tracts or parcels of land in said county and State, to wit: The northwest
132 quarter of section 36, in township 13 north, range 10 east; northeast quarter of section 36, in township 13 north, range 10 east; also the southwest quarter of section 3, in township 12 north, range 10 east; also the northwest quarter of section 31, in township 13 north, range 11 east, said last-named tracts of land being known as the Fain plantation. It is further ordered, adjudged, and decreed that the mortgage executed by the said J. H. Edrington in his lifetime on said tracts of land hereinbefore described as the Whitmore plantation, to secure a debt to James H. Hazard, has been fully paid off and discharged, and the same is no longer any lien thereon, and that the purchase-money due from said J. H. Edrington to Samuel B. McCauley and Penelope Fizer, in her own right and as guardian of Georgia B. McCauley, for the said hereinbefore-described tracts of land known as the Fain plantation, has been fully paid and is no longer any lien on said Fain plantation.

It is further ordered, adjudged, and decreed that the said debt due to said John W. Jefferson, trustee, was a trust fund with which to pay certain creditors of the late firm of Jefferson & Edrington; that of said creditors the following amounts are due and wholly unpaid, to wit: To the Washington Fire & Marine Insurance Company, $16,215.03, bearing interest from this date at 8 per cent. per annum; to Farrington & Howell, $803.84, interest at 8 per cent. from this date; to J. W. Gaff & Co., $997.57, interest at 6 per cent. from this date; N. Huffheimer, $413.10, interest at 6 per cent. from this date; to Chamberlain
& Co., $252.00, interest at 6 per cent. from this date; to Taylor
133 Bros., $1,565.31, interest at 6 per cent. from this date; to H. H. Mette, Sr., $3,442.49, interest at 6 per cent. from this date; to Orgill Bros. & Co., $691.38, interest at 6 per cent. from this date; to the Planters' Insurance Company, $2,954.82, interest at 8 per cent. from this date; H. Wetter & Co., $195.70, interest at 6 per cent. from this date; F. Banksmith & Co., $512.64, interest at 6 per cent. from this date; St. Louis Shot Tower Co., $557.99, interest at 6 per cent. from this date; H. Fitzgerald & Co., $1,012.50, interest at 6 per cent. from this date; Green & Lucas, $736.91, interest at 8 per cent. from this date; Appleton, Noyes & Co., $1,169.49, interest at 6 per cent. from this date; Woodruff & Co., $1,938.86, interest at 6 per cent. from this date; Pointt, Wheatley & Co., $1,204.51, interest at 6 per cent. from this date; J. J. McCombs, managing partner of American Cotton Tie Company, $10,159.63, interest at 6 per cent. from this

date; Mrs. D. McCann, $487.68, interest at 6 per cent. from this date; Belmont Nail Works, $1,035.40, interest at 6 per cent. from this date; Menken Bros., $343.12, interest at 6 per cent. per annum from this date; J. C. Ward & Co., $367.24, interest at six per cent. per annum from this date. It is further ordered, adjudged, and decreed that unless said sum of $39,189.08⅔-100 being principal and interest of the said notes, payable to the said John W. Jefferson, trustee, with interest thereon at the rate of 8 per cent. per annum from this date until paid, shall be paid to R. W. Nicholls, the master in chancery of this court, on or before the 1st day of December, 1879, A. D.; that the said hereinbefore tracts of land shall be by said R. W. Nicholls, master as aforesaid, sold at public auction, at the highest bidder, at the court-house door in the city of Helena, county
134 of Phillips, and State of Arkansas, for cash in hands, he first giving at least 20 days' notice of the time, place, and terms of such sale by an advertisement in some newspaper published in the city of Memphis, Tennessee, and an advertisement in a newspaper published in the county of Mississippi, State of Arkansas, if one be published therein; that the legal title to said tracts of land hereinbefore described as the Fain plantation be divested out of the said Samuel B. McCauley, Penelope Fizer, and Georgia B. McCauley, and vest in the purchasers under the conveyance of said master; that the funds now in the registry of this court be applied first to the payment of the costs in this suit, then prorated to the payment of the said hereinbefore described creditors of Jefferson & Edrington, and Edrington, whose claims are unpaid, and that the said master apply the proceeds arising from such sale to the payment of said debts prorated until the same are paid; and that he report his proceedings herein to the next term of this court, and that J. D. Driver, the special receiver in this cause, at once and without delay pass his final account into the office of the master of this court.

It is further ordered, adjudged, and decreed that the present tenants of said plantation shall not be disturbed in their possession during the present year, and until they have a reasonable opportunity to gather the crop of this season.

And the said complainants, Nancy A. Edrington, as executrix, and said Nancy A. Edrington, individually, prays an appeal to the Supreme Court from the decree of the court, which is granted, and the said Brooks, Neeley & Co. & James D. Driver pray an appeal to the Supreme Court from the decree of this court, which is granted.

HENRY C. CALDWELL, *Judge.*

Attest: S. P. DELATOUR, *Clerk.*

135 *Order in Vacation.*

In the U. S. District Court, January 3, 1880.

NANCY A. EDRINGTON, as Executrix of the last Will and Testament of James H. Edrington, Deceased, Complainants,
vs.
J. W. JEFFERSON, J. T. JEFFERSON, G. W. L. CROOK, JOHN MATTHEWS, Emily R. Hazard, and John H. Hazard, as Adm'r of James H. Hazard, Deceased, and others, Defendants. } Decree.

In this case the master may receive from the purchaser of the lands, in lieu of cash, the receipts of these complainants in the cross-bill, to whom the proceeds of the sale, by the terms of the decree, belong, to amount equal to the distributive share of said parties. The master will require a sum to be paid in cash sufficient to pay all costs.

HENRY C. CALDWELL, *Judge*,

Attest: S. P. DELATOUR, *Clerk*,
By S. I. CLARK, *D. C.*

On the 8th day of March, 1880, the same being the first day of the regular March Term, 1880, of said U. S. dis't court for east. dis't of Arkansas, at Helena, the following order was entered in this cause before the Honorable H. C. Caldwell, judge, to wit:

Report of Sale. Order Filing Same.

NANCY A. EDRINGTON, Executrix of James H. Edrington, Deceased, Complainant,
vs.
JOHN W. JEFFERSON, Trustee, and others, Defendants.

This cause came on to be further heard this day on the re-
136 port of the R. W. Nicholls, master, as to the sale of Fain & Whitmore plantations, filed March 8th, 1880, and for confirmation thereof, which report is in words and figures, as follows, to wit:

Master's Report of Sale.

U. S. Dist. Court, Eastern Dist. Arkansas, at Helena.

N. A. EDRINGTON, Ex., etc., *vs.* J. W. JEFFERSON *et als.*

Report of Sale.

The undersigned master in chancery of this court would report that, in pursuance of the decree rendered in the above-entitled cause at the October term, 1879, he proceeded to sell at public auction to the highest bidder, at the door of the court-house, in the city of Helena, on the 13th day of January, 1880, after he had first given twenty days' notice of the time, terms, and place of such sale in the "Memphis Daily Appeal," a newspaper published in the city

of Memphis, in the State of Tennessee, and in the "Osceola Times," a newspaper published in the county of Mississippi, in the State of Arkansas; in pursuance with the directions of said decree, the following-described lands in Mississippi county, Arkansas: The southwest q'r of section 30, township 13 north, range 11 east; the south half of section 25, the south half of section 26, the southwest q'r of section 34, all in township 13 north, range 11 east, and containing in all 902 acres, and known as the Whitmore plantation; also, the following tracts of land in said county and State, to wit, the northwest q'r of section 36, in township 13 N., range 10 east; the northeast q'r of section 36, in township 13,
137 north, range 10 east; the southwest qr. of section 3, in township 12 north, range 10 east, and the northwest qr. of section 31, in township 13 north, range 11 east; said last-named tracts of land being known as the "Fain plantation;" and that at such sale J. W. Jefferson and J. J. McComb became the purchasers at and for the price and sum of twenty-six thousand five hundred and twenty-five dollars, they being the highest and best bidders therefor; and the said J. W. Jefferson having paid in cash the sum of eighteen hundred and seventy-five dollars, and executed his receipt to said master for the sum of eighteen thousand seven hundred and twenty-three $\frac{75}{100}$ dollars, and the said J. J. McComb having paid in cash the sum of six hundred and twenty-five dollars and executed his receipt to said master for the sum of five thousand three hundred and one $\frac{25}{100}$ dollars, in conformity with the directions of said decree, making in the aggregate the sum of $26,525.00 so paid as aforesaid; and the said J. W. Jefferson and J. J. McComb being the beneficiaries under said decree, and entitled to the proceeds of said sale, and having paid said sums and executed their receipts to said master as aforesaid, in accordance with the terms and provisions of said decree, and having demanded a deed therefor, the said master has executed a deed to said Jefferson and McComb, which he brings herewith into court, and asks that said sale and deed be, in all things, confirmed, and that he be allowed the sum of eight hundred dollars for his expenses and services herein.

R. W. NICHOLLS,
Master, Etc.

Which said report being examined and understood by the
138 court, and there being no exceptions thereto, the same and the said sale reported is, in all things, confirmed, and the commissioner is hereby allowed eight hundred dollars for his expenses and fees in making said sale and the conveyances thereunder by consent.

Master's Report of Distribution of Funds and Order Filing Same, Entered on the 9th March, 1880, at said Regular March Term, 1880, Etc.

NANCY A. EDRINGTON, Executrix,
vs.
J. W. JEFFERSON, Trustees, and others.

This cause (came) on to be further heard on the report of distribution of the funds on hand, filed by R. W. Nicholls, master, filed March 8, 1880, which report is in words and figures as follows, to wit:

N. A. EDRINGTON, Ex., *vs.* J. W. JEFFERSON, *et als.*

Now, on this day, comes R. W. Nicholls, master in chancery, and makes the following report of the distribution of the fund in the above cause now in registry of this court.

L. He reports in registry:

1. From receiver	$6,000 60
2. Am't paid cash by Jefferson & McComb	2,500 00
	$8,500 60

2. Of which sum there is due—

To Chamberlin & Co.	$126 88	their pro rata.	
Green & Lucas	371 03	do.	
Fitzgerald & Co.	509 79	do.	
Mrs. D. McCann	245 54	her do.	
Myers & Sneed & Tappan & Hornor	5,000 00	attorney's fees.	
R. W. Nicholls, master	800 00	master's fees.	
139 S. D. Delatour, clerk	147 36	costs.	
J. K. P. Hale, clerk Miss. Co.	70 95	do.	
John B. Driver, sheriff Miss. Co.	43 00	do.	
Docket fees	42 50	do.	
U. S. marshal	18 50	do.	
Washington F. & M. Ins. Co., cash paid	1,125 05		
	$8,500 60		

Respectfully submitted.

R. W. NICHOLLS, *Master.*

Order of Acknowledgement of Deed and Confirmation of the Same. Entered on said 9th March, 1880.

STATE OF ARKANSAS, *County of Phillips:*

In the Dist. Court of the United States, Eastern District of Arkansas, at Helena. At the March Term, 1880.

Be it remembered that this day R. W. Nicholls came and appeared in open court and produced his deed of conveyance to J. W. Jefferson and J. J. McComb, whereby he, as master of this court, under and by virtue or a decree of said court, rendered at the Octo-

ber term, 1879, thereof, in the case of Nancy A. Edrington, as executrix of the last will and testament of James H. Edrington, as complainant, and John W. Jefferson, trustee, and others, defendants, conveyed to said J. W. Jefferson and J. J. McComb the following-described lands, situate in Mississippi county, in the State of Arkansas, to wit: The southwest qr. of section 30, in township 13 north, range 11 east; the south half of section 25; the south half of section 26; the southwest qr. of section 34 north, range 10 east, containing in all 902 acres, and known as the Whitmore plantation. Also the following tracts or parcels of land, situate in said county of Mississippi and State of Arkansas, to wit: The northwest
140 qr. of section 36, in township 13 north, range 10 east; the northeast qr. of section 36, in township 13 north, range 10 east. Also the southwest qr. of section 31, in township 13 north, range 11 east; said last-named tracts of land being known as the "Fain plantation," and acknowledged that he had signed, sealed, and delivered the same for the uses, purposes, and consideration therein expressed. It is, therefore, ordered, adjudged, and decreed by the court that the said deed be, and the same is hereby, approved and confirmed in all things; and it is further ordered and adjudged by the court that all the right, title, and interest, both legal and equitable, of the said complainant, Nancy A. Edrington, both as executrix of the last will and testament of James H. Edrington, and, individually, one of the defendants; John W. Jefferson, trustee; one Emily R. Hazard and John H. Hazard, both individually and as administrator and administratrix, and sole heirs-at-law of James H. Hazard, deceased; and James H. Edrington, William Bard Edrington, John P. Edrington, Joseph P. Edrington, Sallie Edrington, Eugenia Edrington, Irene (or Rena) Edrington, Emily Hazard Edrington, and Nancy Edrington, children and heirs-at-law of James H. Edrington, deceased; Penelope Fizer, Samuel B. McCauley, and Georgia B. McCauley; and J. C. Neely, S. H. Brooks, and H. M. Neely, partners as Brooks, Neely & Co., and James D. Driver, and all other parties to this cause, be, and the same is hereby, divested out of them, and each and every one of them, and vested in said J. W. Jefferson and J. J. McComb, their heirs and assigns, in fee simple forever.

It is further ordered that a copy of this order be endorsed upon said deed, and that the same be properly certified by the clerk and entitled to record.

141 *Proceedings in Mississippi Circuit Court.*

In Circuit Court, Mississippi County. Jan. Term, 1885. In Chancery.

NANCY A. EDRINGTON, Complainant,

vs.

JOHN W. JEFFERSON, Trustee, J. W. JEFFERSON (not the Trustee), J. J. MCCOMB, as Individual, and Others, Defendants.

Paragraph 1st. John B. Driver respectfully states and shows to

this honorable court that he is a resident citizen of Mississippi county, Arkansas; that he succeeded Mrs. Nancy A. Edrington in the administration of the estate of the late James H. Edrington, and is now the duly qualified and acting administrator *de bonis non* with the will annexed of said estate. A certified copy of his letters of administration are herewith filed, and for identification marked Exhibit "Y," and prayed to be taken as a part hereof.

Paragraph 2nd. Said administrator further states that on the 16th day of November, 1876, the above-entitled cause was removed from this court on the petition of J. W. Jefferson, trustee, J. J. McComb, the Washington Fire and Marine Insurance Co., and other plaintiffs in the cross-bill filed herein, to the Federal court at Helena, Arkansas; that said Federal court rendered a decree in this cause in accordance with the prayer made in and by said cross-bill, directing the sale of certain lands involved in this cause of the estate of the said James H. Edrington, known as the "Fain" place and the "Whitmore" place, in this cause heretofore fully described; that

142 Mrs. N. A. Edrington, as executrix of the last will and testament of the said James H. Edrington, predecessor of him, the said administrator, in the administration of the affairs of said estate, prayed an appeal to the Supreme Court of the United States from said decree, so directing the sale of said lands; but not being able financially, as he is advised, to give a supersedeas bond to supersede said decree, as required by law, said decree was enforced and said lands were sold thereunder; that J. W. Jefferson (not the trustee), who is now in possession thereof, and has been since the date of said sale, on the — day of ——, 18—, and J. J. McComb became the purchasers under said decree; that said Supreme Court of the United States, at its October term, 1883, on the 5th day of May, 1884, one of the days of the said term rendering said decree, remanded said cause hence to said Federal court at Helena, with directions to send said cause back to this court, for the reason said Federal court had no jurisdiction to hear and determine said cause; that the decree rendered by said Federal court was absolutely null and void, and passed no title, legal or equitable, to the said purchaser of said land at said sale, and the same are now, and have been since the pendency of this suit, of the estate and property of the said James H. Edrington; that there is now, and has been from the date of said sale, about one thousand acres of cleared and improved land in said two places, worth the average rental value, as shown by the proof in this cause, the sum of $7.00 per acre, with which, with the accrued interest thereon, the said J. W. Jefferson (purchaser), is chargeable as trustee for the benefit of said estate; that said Jefferson (purchaser) is now in possession of said lands as aforesaid, and has been for five years last past from the date of said sale; that he went into possession under such void decree

143 *pendente lite*, and is chargeable with all the — involved in this cause, and thereby made himself a party to the same; that said J. W. Jefferson purchased the interest of said McComb acquired under said void decree, and took a conveyance therefor which is a cloud on said Edrington title; that the said J. W. Jeffer-

son (purchaser) is now the owner, and became such long before the entry of said void decree by said Federal court, of all the claims secured in and by a certain deed in trust, particularly described in this cause, which is sought to be enforced against said estate and for which said decree was rendered; that he purchased all of said claims, except, perhaps, the one due the American Cotton Tie Company, represented by the said J. J. McComb, for not exceeding 20 cents on the dollar during the pendency of this suit, or perhaps he and said McComb purchased said claims jointly. Be that as it may, said J. W. Jefferson is now the sole beneficiary under said deed of trust, and has at all times been a party to this suit, as president of the Washington Fire and Marine Insurance Company, [of] which he, prior to and at the time of the dissolution, was sole owner and proprietor. That none of the creditors represented in said deed of trust now have any interest therein or in this cause, their interest being held by the said J. W. Jefferson, as aforesaid, by transfer or assignment to him by them. That said J. W. Jefferson is the only one prosecuting said cross-bill, and is the only one of the creditors named in said deed of trust who is seeking to enforce the same against the said estate. That said J. W. Jefferson (in fact), in the name of said creditors, for his own benefit, and perhaps the benefit of the

144 said J. J. McComb, under whom he holds the interest purchased by said McComb at said void sale, withdrew from the hands of the receiver appointed by this court the sum of $6,000.00 on the 3rd day of January, 1880, which said Jefferson claimed by virtue of said void decree rendered by said Federal court at Helena. That he is advised that the said sum of $6,000.00, with accrued interest thereon from the said 3rd day of January, 1880, and the said rent due from the said Jefferson, belongs to said administrator, to be distributed among the general creditors of said estate. That said sum so withdrawn from said receiver was derived from rents collected on said lands. That said estate is hopelessly insolvent, if said sum be collected from said Jefferson. That there are about forty-eight thousand dollars in claims proved up against said estate, exclusive of interest, outside of said deed of trust. That, including the claims in said deed of trust, the liability of said estate, with accrued interest, will amount to about $100,000.00. That said J. W. Jefferson is indebted to said estate, as shown by the statement herein included, in the sum of $47,000.00. That said sum is more or quite sufficient to pay off and discharge the deed of trust aforesaid, of which said Jefferson is now the sole owner; and if it be decreed that the sum withdrawn from said receiver and the rents due from said Jefferson shall go to the credit of said deed of trust, then in that event said administrator is advised that he can offset said sum and rents due as aforesaid against the claim included in said deed in trust, said Jefferson being the sole beneficiary now thereunder, and being indebted to said estate, as aforesaid.

145 Paragraph 3. Said administrator further shows that said Jefferson is justly indebted to said estate in the following amounts, to wit:

For rent of said lands for year 1880	$7,000 00
Int. on same at 6 per cent., 4 yrs., to Jan. 1, '85	1,680 00
For rent of said lands for year 1881	7,000 00
Int. on same at 6 per cent., 3 yrs., to Jan'y 1, 1885	1,260 00
For rent of said lands for the year 1882	7,000 00
Int. on same at 6 per cent., 2 yrs., to Jan'y 1, 1885	840 00
For rent of said lands for the year 1883	7,000 00
Int. on same at 6 per cent., 1 yr., to Jan'y 1, 1885	420 00
For rent of said lands for year 1884	7,000 00
Making total due for rent	$39,200 00
To this sum withdrawn from receiver	6,000 00
Int. on same at 6 per cent., 5 yrs., to Jan'y 1, 1885	1,800 00
Making grand total due said estate	$47,000 00

From J. W. Jefferson; that said sum, if applied to said deed in trust, will pay off and discharge the same; that he is advised that said Jefferson holds said sum due said estate as trustee for the benefit of said estate; wherefore said administrator prays that he be allowed to intervene and be made a party in place of said Nancy A. Edrington, as executrix, etc.; that said J. W. Jefferson, by proper order, decree, or judgment of this court, be required to pay said sum of $47,000.00, with accruing interest thereon, to said administrator; that if it be decreed that said sum in the hands of said J. W. Jefferson, as aforesaid, shall go to the satisfaction of the creditors in said deed in trust, then, in that event, he prays said sum due for
146 rent be decreed and offset to the claim secured in and by said deed in trust, the said J. W. Jefferson now being the sole owner thereof; that said J. W. Jefferson be cited to appear before this court and make settlement of said claim, and that he have all other necessary, special, or general relief to which he may in equity be entitled, etc., etc.

JOHN C. PALMER AND
GREER & ADAMS,
For said Administrator.

STATE OF ARKANSAS, *County of Mississippi:*

Personally appeared before me John B. Driver, adm'r, *d. b. n.* of the estate of J. H. Edrington, deceased, and made oath that the facts set forth in the foregoing amended answer are true to the best of his knowledge and belief.

JOHN B. DRIVER,
Administrator D. B. N.

Sworn to and subscribed before me on this January 22, 1885.
HUGH R. McVEIGH, *Clerk.*

Endorsed thereon: Filed January 16th, 1885. Hugh R. McVeigh, clerk, by G. A. Bolick, D. C.

147 *Fourth Amended and Supplemental Complaint.*

In Circuit Court, Mississippi Co. Jan. Term, 1885. In Chancery.

NANCY A. EDRINGTON, Plaintiff,

vs.

J. W. JEFFERSON, Trustee, *et al.*, Defendants.

By leave of court first had and obtained Mrs. Nancy A. Edrington, by way of amendment to her original complaint filed in the above-entitled cause, respectfully represents and shows unto this honorable court that since the removal of this cause to the Federal court at Helena, Arkansas, and whilst it was there pending, or in the Supreme Court of the United States, she filed her final settlement as executrix of the last will and testament of James H. Edrington in the probate court of Mississippi county, Arkansas, which was by the court confirmed and approved, and no appeal was prayed or taken therefrom by any one; that shortly thereafter she resigned and removed to the State of Tennessee, where she now resides; that one John B. Driver qualified as administrator *de bonis non* with the will annexed of the estate of said James H. Edrington, and is now legally acting as such; that by her said final settlement it appears that she did fully administer all the assets of said estate which came to her hands as such executrix; that from said final settlement it appears that said estate was and is hopelessly insolvent; that she only received the sum of $23,289.91 of the money and property of said estate, which long before her resignation [was] paid out by her and reported in
148 her settlement with said probate court, and was by said court approved and confirmed, as aforesaid; that from said settlement accounts it also appears that claims against said estate to the amount of $76,013.84 had been approved and allowed up to that time; that when said estate is finally audited it will appear that it is legally indebted to her individual means used in paying debts of said estate; that after the removal of said cause to the said Federal court it rendered a decree ordering a sale of lands known as the "Fain place" and the "Whitmore place," described and involved in this cause; that she appealed from said decree to the Supreme Court of the United States, but being unable to give a supersedeas bond, as required by law, the said Federal court enforced said decree, and said Fain and Whitmore places were sold thereunder; that said Supreme Court, at its October term, 1883, on the 5th day of May, 1884, one of the days of said term, reversed said decree of said Federal court at Helena, [and] remanded the cause thereto, with instructions to send the cause back to this court; that under the sale in pursuance of said decree some of the creditors of said estate, and before this court, J. J. McComb and J. W. Jefferson, became the purchasers of said lands, and they, or one of them, have been illegally and wrongfully in possession thereof since the date of said sale; that said Supreme Court reversed said decree because said cause was improperly removed from this court and said Federal court had no jurisdiction therein, and said sale was absolutely null and void; that plaintiff received from various life-insurance companies described heretofore in this cause the

sum of $22,500.00 taken out by her husband, the said James H.
149 Edrington on his life for the benefit of herself and children, which, she is advised, is exempt from the claim of creditors of her said husband's estate; that in addition to said insurance money she was entitled to the sum of $7,763.30, one-third of the assets which came into her hands as dower in her said husband's estate; which, she is also advised, is exempt from the claim of creditors of her said husband's estate; that all of said insurance money and her dower interest in said estate, except, perhaps, a small amount, has been consumed by her in paying debts contracted by her said husband; that long prior to his death he executed a mortgage, with power of sale, to one J. H. Hazard on the lands known as the "Whitmore place," to wit, on the 8th day of January, 1871, for the sum of $8,000.00, payable in one year thereafter, with ten per cent. interest per annum after maturity, which was evidenced by the said J. H. Edrington's promissory note of that date; that said mortgage was properly acknowledged and duly recorded, and being long past due at the date of her qualification as said executrix, and that shortly thereafter said Hazad threatening to sell said "Whitmore place" for said mortgage debt, she, hoping to save something for said estate, and not knowing to what extent her said husband's estate was indebted, with a part of the insurance money, which was hers and received as aforesaid, in her own individual capacity paid off said Hazard mortgage on said "Whitmore place;" that in equity she ought to be subrogated to the rights of said Hazard in said mortgage, with the accrued interest thereon, at 10 per cent., to the date of the repayment to her; that she also, with her own means derived as afore-
150 said, paid off and discharged two notes made by her husband on the 1st day of January, 1873, for $5,000.00 each, with ten per cent. interest per annum from date, in favor of Mrs. Penelope Fizer, and as guardian for Georgia B. McCauley, and which were given for the purchase-money of the lands known as the "Fain place," and were lien thereon, and were about to be enforced by said parties known in this litigation as the "McCauley lien;" that said Hazard mortgage and the two notes aforesaid known as the McCauley notes were prior and paramount liens on said lands to the deed in trust to J. W. Jefferson, which is now in this litigation sought to be enforced in the cross-bill filed herein by the said J. W. Jefferson, Washington Fire & Marine Insurance Company and others, to the exclusion of plaintiff's rights of subrogation; that but for the timely intervention as aforesaid of plaintiff with her own means said lands would have long since been sold under said prior encumbrances aforesaid; that said Washington Fire Insurance Company and the other complainants in said cross-bill have steadily refused and resisted plaintiff's claim to be reimbursed out of the proceeds of said land for said Hazard mortgage—"McCauley notes;" that she is informed that there is now in the hands of J. W. Jefferson, one of the purchasers under said void decree rendered by said Federal court, a large sum of money due for rent of said lands to the administrator of her said husband's estate, amounting to about the sum of $42,000.00 with the accrued interest thereon; that said Washington Fire Insurance

Company, J. W. Jefferson, and the other plaintiffs in said cross-bill under said void decree withdrew from the hands of the receiver of this court the sum of $6,000.00, which
151 she is advised in justice to other creditors of her husband's estate will by the order of this court be returned to said administrator with the accrued interest thereon; that when said claim of $42,000.00 for rent shall have been collected, and the said $6,000.00 returned to said administrator, said sums will be more or quite enough to pay off and discharge said deed in trust given to said J. W. Jefferson, trustee; that J. W. Jefferson (not the trustee, but the one now in possession of said lands as purchaser aforesaid) is the owner and holder of all the claims secured under said deed in trust, for which he paid not exceeding the sum of twenty cents on the dollar, and it was he, in fact, who received the $6,000.00 from said receiver, he having purchased all of said claim in said deed in trust secured as aforesaid; that said claims were assigned and transferred to said Jefferson, or perhaps Jefferson & McComb, long before the entry of said void decree in said Federal court, and all the parties plaintiff in said cross-bill, save only the said J. W. Jefferson and J. J. McComb, have now no interest in this cause; that the original amount of the Hazard mortgage on the 8th day of January, 1871, was $8,000 00
To which must be added 13 y'rs' interest, at 10 per c... 10,400 00

Making total due thereon $18,400 00
That the original am't of McCauley notes were $10,000 00
To which am't must be added 12 y'rs' int., at 10 per ct... 12,000 00

Making total am't, prin. & int., due to plaintiff... $40,400 00

On said claim, which she is advised in equity should be decreed a prior lien in her favor on said lands to the deed in trust exe-
152 cuted to said J. W. Jefferson, trustee, as aforesaid; that she, having used her own means in discharging prior incumbrances created by her said husband, of which said parties secured in and by said deed in trust had full notice at the time of the taking the same, she will be subrogated to the rights of said original holder of said prior incumbrances, and is entitled to have them enforced in her favor, wherefore she prays, as in her original and amended complaints heretofore filed in this cause, that she be subrogated to the rights of said original holder of said "Hazard mortgage and McCauley notes," and they be decreed prior lien in her favor on said lands for the full sum as aforesaid, with the accrued interest thereon, and the same be enforced against said lands; that she have all the special and necessary or general relief to which she may in law or equity be entitled, etc., etc.

JOHN C. PALMER AND
GREER & ADAMS,
For Mrs. Edrington.

Endorsed thereon: Filed January 17th, 1885. Hugh R. McVeigh, C. & M., by G. A. Bolick, D. C.

11—1083

153 *Petition for Removal by J. T. Jefferson.*

In the Circuit Court of Mississippi County, State of Arkansas. In Equity.

JOHN B. DRIVER, Administrator *de bonis non*, with the Will annexed of James H. Edrington, Deceased, Complainant,

vs.

JOHN W. JEFFERSON, Trustee; J. T. JEFFERSON, J. W. JEFFERSON (not trustee), and Others, Defendants.

Petition for removal of suit to the Federal court.

To the Honorable W. H. Cate, judge of the circuit [court] of Mississippi county, in the State of Arkansas, sitting in equity:

Your petitioner, J. T. Jefferson, respectfully shows that he is one of the defendants in the foregoing entitled suit, and that the same was commenced by the original complaint therein, Nancy A. Edrington as executrix of James H. Edrington, deceased, as sole complainant, on or about December 11th, 1874, by filing her original bill in equity herein, and that said suit is now pending, wherein John B. Driver, administrator *de bonis non*, with the will annexed of James H. Edrington, deceased, a resident and citizen of Mississippi county, State of Arkansas, is complainant. Your petitioner, who is a citizen of Tennessee, and J. W. Jefferson, trustee, at the time of filing of the bill, was a resident and citizen of Tennessee, and now a citizen of California; J. J. McComb, who, at the date of filing bill, was a citizen of Louisiana, and now a citizen of New York; The Washington Fire and Marine Insurance Co., The Planters' Ins. Co., J. C. Ward & Co., F. Banksmith & Co., Orgill Bros. & Co., H. Wetter & Co.,
154 citizens of the State of Tennessee; Appleton, Noyes & Co., citizens of Missouri; Taylor Bros., citizens of Ohio, and J. W. Jefferson, resident and citizen of Tennessee; Penelope Fizer, individually and as guardian, and Samuel B. McCauley and Georgia B. McCauley, citizens of Tennessee and Kentucky; Emily Hazard and John H. Hazard and John Matthews, citizens of Arkansas, are defendants.

And that since the commencement thereof and pending said suit the original complainant, Nancy A. Edrington, executrix as aforesaid, has resigned her office of executrix of the estate of said James H. Edrington, deceased, and that one John B. Driver has qualified in the probate court of Mississippi county, Arkansas, as administrator *de bonis non*, with the will annexed of the estate of said James H. Edrington, deceased, and is her successor in office of the said executrix, and the above and within entitled cause has been, by decree of this court, revived in the name of John B. Driver, as administrator *de bonis non*, with the will annexed of said James H. Edrington, and he has been substituted as sole complainant in the said original and amended bills in the room and stead of Nancy A. Edrington, ex'r'x aforesaid, resigned; and that said complainant, Nancy A. Edrington, ex'tr'x, was at the time of the commencement of said suit a resident and citizen of Mississippi county, Arkansas, and so

continued until her resignation and removal as executrix as aforesaid.

He further states that the now complainant, John B. Driver, has been during the pendency of this suit and now is a resident and citizen of said Mississippi county, in the State of Arkansas.

155 So petitioner states that the sole complainant in this cause was at the time of the commencement of this suit, and is now, a resident and citizen of Mississippi county, Arkansas; that your petitioner was at the time of bringing said suit, and still is, a resident and citizen of Shelby county, in the State of Tennessee.

Your petitioner further shows that in said suit above mentioned that there is now, and was at the time said suit was brought, a controversy therein, which is wholly between citizens of different States, and which can be fully determined as between them without the presence or invention of other parties, to wit, a controversy between your petitioner, who is a resident and citizen of the State of Tennessee, and the complainant to the original bill, who is a resident and citizen of Mississippi county, in the State of Arkansas, and that the matter in dispute in this suit exceeds the sum [of] five thousand dollars, exclusive of costs, and that the matter in dispute between your petitioner and the complainant now exceeds the sum of five thousand dollars, exclusive of costs.

Your petitioner further represents that this suit has not been tried by any court having jurisdiction, but is now pending for trial in the circuit court of Mississippi county, in the State of Arkansas, and that your petitioner desires to remove the said suit into the district court of the U. S. for the eastern district of Arkansas, at Helena (which court has circuit court jurisdiction), in pursuance of the acts of Congress in that behalf provided, to wit, the Revised Statutes of the United States, section 639, subdivision three, & the act of Congress of March 3rd, 1875.

156 Your petitioner further states that he has filed the affidavit required by the statute in such cases, and offers herewith his bond, executed by himself and —— as security in the penal sum of one thousand dollars, conditioned as said act of Congress required.

Your petitioner therefore prays that the said bond be accepted as good and sufficient, according to the acts of Congress, and that the said suit may be removed into the next district court of the U. S. for the eastern dist. of Ark., at Helena, pusuant to the aforesaid acts of Congress in such cases made and provided, and that no further proceedings may be had herein, except to make the order of removal as required by law.

And will ever pray.

J. T. JEFFERSON.

Subscribed by the said J. T. Jefferson in my presence, and by him sworn to before me, at Memphis, Tennessee, this 15th day of January, 1885.

[L. S.] E. A. LONG,
Notary Public.

Endorsed thereon: Filed January 17th, 1885. Hugh R. McVeigh, clerk, by G. A. Bolick, D. C.

157 *Affidavit of J. T. Jefferson for Removal.*

In the Circuit Court of Mississippi county, State of Arkansas.

JOHN B. DRIVER, as Administrator *de bonis non*, with the Will annexed, of the Estate of JAMES H. EDRINGTON, deceased, Plaintiff,

vs.

J. T. JEFFERSON, J. W. JEFFERSON, Trustee, and others, Defendants.

I, J. T. Jefferson, being duly sworn, do say: That I am one of the defendants in the above-entitled cause; that I have reason to believe, and do believe, that from prejudice and local influence I will not be able to obtain justice in said State court.

J. T. JEFFERSON.

Subscribed by the said J. T. Jefferson in my presence, and by him sworn to before me at Memphis, Tennessee, this 15th day of January, 1885.

[L. S.] E. A. LONG,
Notary Public.

Endorsed thereon: Filed January 17th, 1885. Hugh R. McVeigh, clerk, by G. A. Bolick, D. C.

158 *Bond of J. T. Jefferson for Removal.*

Know all men by these presents that we, Joshua T. Jefferson, as principal, and J. W. Jefferson, of Shelby county, State of Tennessee, and Jas. C. Tappan, of the State of Arkansas, as sureties, are held and firmly bound unto John B. Driver, administrator *de bonis non*, with the will annexed, of the estate of James H. Edrington, deceased, in the penal sum of one thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, by these presents.

The condition of this obligation is such that if the said Joshua T. Jefferson shall enter and file, or cause to be entered and filed, in the next dist. court of the U. S. for the eastern district of Arkansas, at Helena, Ark., on the first day of its session, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain cause, suit, or action now pending in the circuit court of the county of Mississippi, and State of Arkansas, in which the said John B. Driver, as administrator *de bonis non* as aforesaid, is pl'tff in equity, and the said J. T. Jefferson and others are defendants in equity, and shall well and truly pay all costs that may be awarded by said district court of the U. S., if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into the said United States court, then this obligation to be void; otherwise in full force and virtue.

Dated 16th day of January, 1885.

J. T. JEFFERSON,
By GANTT & PATTERSON, *Att'ys.*

159 J. W. JEFFERSON.
JAS. C. TAPPAN.

STATE OF TENNESSEE, *County of Shelby:*

I, J. W. Jefferson, of said county and State, a surety named in the foregoing bond, being duly sworn, do depose that I am worth at least the sum of five thousand dollars over and above all my debts and liabilities, and exclusive of property by law exempt from execution, and that I have property in the State of Arkansas liable to execution of the value of more than five thousand dollars.

J. W. JEFFERSON.

Subscribed in my presence by J. W. Jefferson, and by him sworn to before me, this 16th day of January, A. D. 1885.

[L. S.] E. A. LONG,
Notary Public.

STATE OF TENNESSEE, *County of Shelby:*

I, James C. Tappan, [a] citizen of Phillips county, State of Arkansas, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Arkansas and a property holder therein; that I am worth (at least) the sum of five thousand dollars over and above all my debts and liabilities, and exclusive of property by law exempt from execution; that I have property in the State of Arkansas liable to execution of the value of more than five thousand dollars.

J. C. TAPPAN.

160 Subscribed in my presence by J. C. Tappan, and by him sworn to before me, this 16th day of January, 1885.

[L. S.] E. A. LONG,
Notary Public.

Endorsed thereon: Filed January 17th, 1885. Hugh R. McVeigh, clerk, by G. A. Bolick, D. C.

161 *Petition of J. W. Jefferson for Removal.*

In the Circuit Court of Mississippi County, Arkansas. In Equity.

JOHN B. DRIVER, Administrator *de bonis non*, with the will annexed of James H. Edrington, deceased, Plaintiff in Equity,

vs.

JOHN W. JEFFERSON, J. T. JEFFERSON, J. W. JEFFERSON, (not the trustee,) J. J. MCCOMB, and others, Defendants in Equity.

Petition for removal of suit to the Federal court.

To the honorable W. H. Cate, judge of the circuit court of Mississippi county, Arkansas, sitting in equity.

Your petitioner, J. W. Jefferson, respectfully shows that he is one of the defendants in the foregoing-entitled suit in equity, and that the same was commenced by the original complainant therein, Nancy A. Edrington, as executrix of the last will and testament and estate of James H. Edrington, deceased, by filing her origina bill in equity herein on or about December the 11th, 1874, and that said suit in equity is now pending in said circuit court of Mississippi county,

Arkansas. Wherein, by the original bill and amendment thereto, John W. Jefferson, as trustee, who at the time of the commencement of said suit in equity was a resident and citizen of the State of California. J. J. McComb, as managing partner of the American Cotton Tie Co., who at the date said suit was commenced, was a citizen of the State of Louisiana, but now a citizen of the State
162 of New York, and said American Cotton Tie Company was and is a corporation chartered under the laws of the State of Louisiana; The Washington Fire & Marine Insurance Company, The Planters' Insurance Company, J. C. Ward & Co., F. Banksmith & Co., Orgill, Bros. & Co., H. Wetter & Co., residents and citizens of the State of Tennessee; Appleton, Noyes & Co., residents and citizens of the State of Missouri Taylor Bros., residents and citizens of the State of Ohio; Penelope Fizer, individually and as guardian; Samuel B. McCauley and Georgia B. McCauley, residents and citizens of the State of Tennessee and Kentucky, but having no real interest in the controversy; Emily R. Hazard and John H Hazard, and John Matthews, residents and citizens of the State of Arkansas, but having no real or beneficial interest in the suit; and by a recent amendment your petitioner, J. W. Jefferson, (who by the way, is not the same person as John W. Jefferson, trustee,) was made defendant, who at the date of filing the original bill was, and is now, a resident and citizen of Shelby county, State of Tennessee.

Were made defenda-ts thereto, and during the pendency of said suit, Brooks, Neely & Company, and James D. Driver, who severally filed their petitions and claims in said cause.

That since the commencement of said suit in equity and pending the same, the said original complainant, Nancy A. Edrington, executrix as aforesaid, resigned her office of executrix of the estate of James H. Edrington, in the probate court of Mississippi county, Arkansas, and her resignation was accepted by said court and she discharged as such ex'tr'x, to wit, on the — day of ——, 187—.
163 And that subsequent thereto one John B. Driver was appointed and qualified in the said probate court of Mississippi county, Arkansas, as administrator *de bonis non*, with the will annexed, of the estate of James H. Edrington, deceased, and is the successor in office of the said Nancy A. Edrington, former executrix, and so acting.

That the said above-entitled cause has been by decree of this court therein revived in the name of said John B. Driver, as administrator *de bonis non*, with the will annexed, of the estate of James H. Edrington, deceased, and has been substituted as complainant in the said original and amended bills in lieu of and in the room and stead of the said Nancy A. Edrington, executrix as aforesaid, resigned.

Petitioner also shows that the said Nancy A. Edrington, ex'tr'x as aforesaid, the original complainant in said suit in equity, was a resident and citizen of Mississippi county, Arkansas, at the time said suit was brought, and so continued to be until her resignation and discharge as executrix as aforesaid.

They further state that the now complainant, John B. Driver, administrator *de bonis non* as aforesaid, has been, during the pendency

of this suit, and is now, a resident and citizen of said Mississippi county, Arkansas.

So petitioner further states that the sole complainant in said cause was at the time of the commencement of said suit, and is now, a resident and citizen of the county of Missis-ippi and State of Arkansas; that your petitioner, J. W. Jefferson, was at the time said
164 suit was commenced, and is now, a resident and citizen of Shelby county, State of Tennessee.

Petitioner further shows that on or about November 16th, 1876, upon petition of certain parties in said suit, the same was removed to the district court of the U. S., having circuit court jurisdiction for the then western district of Arkansas, at Helena; that a decree was rendered in said Federal court, directing the sale of the land described in the pleadings in said suit, to wit, the "Fain" and "Whitmore" plantations in Mississippi county, Arkansas, and in pursuance of said decree said plantations were sold by the master in chancery on or about January 13th, 1880, at which sale your petitioner and J. J. McComb became the purchasers of both "Fain and Whitmore" plantations; complied with the sale, paid the purchase-money therefor, which sale was duly confirmed by said court. The master in chancery executed to them his deed to the same, and at the March term, 1880, of said court said sale was confirmed and said deed approved by the court. And your petitioner went into possession of said two plantations as purchaser; that on April 26th, 1880, petitioner, J. J. McComb, sold and conveyed his entire interest in said purchase of said plantations to your petitioner, J. W. Jefferson, by deed, since which time petitioner, J. W. Jefferson, has been in possession of said plantations under the deed aforesaid as sole owner.

That said suit was carried by appeal from the Federal court at Helena to the Supreme Court of the United States, which Court, at its October term, 1883, reversed said decree, and remanded
165 the said suit to the said Federal court at Helena, with directions to remand to the circuit court of Mississippi county, Arkansas, which has been done, and which suit is now pending there.

Petitioner further shows that on the —— day of January, 1885, at the present term of this court, a decree was made in said cause substituting John B. Driver, administrator *de bonis non*, with the will annexed, of the estate of James H. Edrington, deceased, as complainant in said suit in lieu of Nancy A. Edrington, executrix, resigned, with leave to file an amended and supplemental bill, and that at the present term of this court, to wit, on the —— day of January, 1885, the said complainant, John B. Driver, administrator *de bonis non* as aforesaid, files his amended and supplemental bill in said suit against your petitioner and J. J. McComb, making them parties thereto, which amended and supplemental bills seeks to set aside the deeds under — your petitioner holds said Fain and Whitmore plantations as void, and for an account and decree against them, particularly petitioner Jefferson, for the reasonable rents of said plantation from the date of such sale [in] 1880, which is a new suit as to your petitioner. Petitioner J. W. Jefferson states that he has never been a party to said suit previous to the filing of said amended

bill, viz, J. B. Driver, adm'r as aforesaid, and that said J. J. McComb has never been made a party individually in this cause until so made by said amended bill filed January 1, 1885, herein as aforesaid, if he is so made a party to the same.

166 Your petitioner, J. W. Jefferson, shows that in the said suit above mentioned there is now, and was at the time said suit in equity was brought against petitioner therein, and is now therein, a controversy which is wholly between citizens of different States, and which can be fully determined as between them without the presence or intervention of the other parties thereto, to wit, a controversy between your petitioner, defendant J. W. Jefferson, who is a citizen and resident of the State of Tennessee, and the complainant in the original and amended bill, John B. Driver, administrator *de bonis non*, with the will annexed of James H Edrington, deceased, who is a citizen of Mississippi county, Arkansas. He further states that the matter in dispute in this suit exceeds the sum of five hundred dollars exclusive of costs, and that the matter in dispute between petitioner and complainant herein exceeds the sum of five hundred dollars.

Petitioner states that this suit has not been tried by any court having jurisdiction of same, but is now pending for trial in the circuit court of Mississippi county, Arkansas.

Petitioner further shows that this suit is to him a new suit just brought by the amended bill filed herein on the — day of January, 1885, and this is the first term of this court at which this cause or suit could be tried; that said suit is of a civil nature, being a suit in equity, and that your petitioner desires to remove the said suit into the district (circuit) court of the U. S. for the eastern district of Arkansas, at Helena (which court has circuit court jurssdiction), in pur-

167 suance of the acts of Congress in that behalf provided, to wit, the Revised Statutes of the United States, section 639, subdivision three (3), and the acts of Congress of March the 3rd, 1875.

Petitioner further states that —— has filed the affidavit required by the statutes in such cases, and offered herewith his bond with good and sufficient security, executed by himself and J. C. Tappan, as surety, in the penal sum of one thousand dollars, conditioned as required by said acts of Congress in such cases made and provided for the entering in said (circuit) district court of the United States on the first day of its next session a copy of the records in this suit, including copies of all process, pleadings, depositions, testimony, and other proceedings, and for paying all costs that may be awarded by said district (circuit) court, if said court should hold that this suit was wrongfully or improperly removed thereto. And he prays this honorable court to proceed no further herein, except to make the order of removal as required by law, and to cause the record herein to be removed into the said district (circuit) court of the United States in and for the district of eastern Arkansas, at Helena; and he will ever pray.

MEYERS & SNEED,
TAPPAN & HORNER,
Sol'rs for Petitioner.

STATE OF TENNESSEE, *County of Shelby:*

Personally appeared before me J. W. Jefferson, one of the
168 petitioners in the foregoing petition, and made oath that the statements in the foregoing petition are true, to the best of his knowledge and belief.

J. W. JEFFERSON.

[L. S.] E. A. LONG,
Notary Public.

Endorsed thereon: Filed January 17th, 1885. Hugh R. McVeigh, by G. A. Bolick, D. C.

169 Record, p. 1523.

Affidavit.

In the Circuit Court of Mississippi County, State of Arkansas. In Equity.

JOHN B. DRIVER, Administrator *de bonis non*, with the will annexed, of James H. Edrington, deceased, Plaintiff,

vs.

JOHN W. JEFFERSON, Trustee; J. T. JEFFERSON, J. W. JEFFERSON (not the Trustee), and others, Defendants.

STATE OF TENNESSEE, *County of Shelby:*

I, J. W. Jefferson, being duly sworn, do say that I am one of the defendants in the above-entitled cause; that I have reason to believe, and do believe, that from prejudice and local influence I will not be able to obtain justice in said State court.

J. W. JEFFERSON.

Subscribed by the [said] J. W. Jefferson in my presence, and by him sworn to before me, at Memphis, Tennessee, this 16th day of January, 1885.

E. A. LONG,
Notary Public.

Endorsed thereon: Filed January 17th, 1885. Hugh R. McVeigh, clerk, by G. A. Bolick, D. C.

170 *Bond of J. W. Jefferson for Removal.*

Know all men by these presents that I, J. W. Jefferson, as principal, and James C. Tappan and D. E. Myers, as sureties, are held and firmly bound unto John B. Driver, as administrator *de bonis non*, with the will annexed, of the estate of James H. Edrington, deceased, in the penal sum of fifteen hundred dollars, the payment whereof, well and truly to be made, unto the said John B. Driver, as such administrator *de bonis non*, and to his successors, as such, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents:

The condition of this obligation is such that if the said J. W. Jefferson, the petitioner, shall enter into and file or cause to be entered

and filed in the next district court of the United States for the eastern district of Arkansas, at Helena, Arkansas, on the first day of its session, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain cause, suit, or action now pending in the circuit court of the county of Mississippi, and State of Ark., in which the said John B. Driver, as administrator *de bonis non* as aforesaid, is plaintiff in equity, and the said J. W. Jefferson, J. J. McComb, and others are defendants in equity, and shall well and truly pay all costs that may be awarded by said district court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall do such other appropriate acts as by the acts of Congress in that behalf are required to
171 be done upon the removal of such suit from said State court into the said United States court, then this obligation to be void; otherwise, in full force and virtue.

Dated this 16th day of January, 1885.

J. W. JEFFERSON.
J. C. TAPPAN.
D. E. MYERS.

STATE OF TENNESSEE, *County of Shelby:*

I, James C. Tappan, the surety named in the foregoing bond, being duly sworn, do depose and say: That I am a resident of the State of Arkansas, and a property holder therein; that I am worth (at least) the sum of five thousand dollars over and above all my debts and liabilities exclusive of property by law exempt from execution; that I have property in the State of Arkansas liable to execution of the value of more than five thousand dollars.

J. C. TAPPAN.

Subscribed in my presence by J. C. Tappan, and by him sworn to before me this 16th day of January, A. D. 1885.

[L. S.] E. A. LONG,
Notary Public.

Endorsed thereon: Filed January 17th, 1885. Hugh R. McVeigh, clerk, by G. A. Bolick, D. C.

172 Record, p. 1530.

Order made in Mississippi Circuit Court.

STATE OF ARKANSAS, *County of Mississippi:*

Be it remembered that at a regular term of the circuit court of Mississippi county, Arkansas (on the chancery side thereof), on the second Monday in January, 1885, there was present and presiding the Honorable W. H. Cate, judge of said court; Hugh R. McVeigh, clerk thereof; and W. B. Haskins, sheriff of said county, when, among other proceedings had, were the following:

N. A. EDRINGTON, Ex., *vs.* J. W. JEFFERSON, Trustee.

JANUARY 16*th*, 1885.

Now on this day the supplemental and amended complaint and

answer to cross-bill of J. B. Driver, administrator *de bonis non*, with the will annexed, of the estate of J. H. Edrington, deceased, is filed.

N. A. EDRINGTON *vs.* J. W. JEFFERSON *et al.*

JANUARY 17*th*, 1885.

Now on this day came the parties in this cause, and the application of John B. Driver, as administrator *de bonis non*, of the will annexed, of James H. Edrington, deceased, to be made party to this suit in lieu of the said Nancy A. Edrington, who has resigned the executorship of said estate, coming on to be heard, said application granted, and said John B. Driver, as administrator as afore-
173 said, is made a party in this cause, which is ordered to progress in the name of John B. Driver, as administrator as aforesaid, as one of the plaintiffs herein.

NANCY A. EDRINGTON *et al. vs.* J. W. JEFFERSON *et al.*

JANUARY 17TH, 1885.

Now on this day came the parties in this cause, and Nancy A. Edrington files her amended and supplemental complaint, and thereupon the said defendants move to strike out from the files of this court the said amended and supplemental complaint.

JOHN B. DRIVER, Administrator *de bonis non* of J. H. Edrington,
vs.
JOHN W. JEFFERSON, Trustee, J. W. Jefferson (not the Trustee), & Others.

No. 38.
In Equity.

JANUARY 17TH, 1885.

Now comes this day, —— 17th, 1875, J. W. Jefferson (not the trustee), by his solicitors, Tappan & Hornor and Myers & Sneed, and enters his appearance — the amended and supplemental bill of the complainant, John B. Driver, administrator, etc., of James H. Edrington, deceased, and whereupon the said defendant to said amended and supplemental bill files his petition for removal of this suit to the district court of the U. S. having circuit court jurisdiction for the eastern district of Arkansas, and at the same time filed his bond and affidavit of local prejudice therewith.

JOHN B. DRIVER, as Administrator *d. b. n.*, with the Will annexed, of the Estate of James H. Edrington, Deceased,
vs.
JOHN W. JEFFERSON, Trustee, and Others.

174 JANUARY 17TH, 1885.

Comes the plaintiff in the above-entitled cause and moves the court to dismiss the original and amended bills in the above-entitled cause as to J. T. Jefferson without prejudice, which is by the court granted.

JOHN B. DRIVER, Adm'r *de bonis non* of Jas. H. Elrington, Dec'd, Pl't'ff,

vs.

J. W. JEFFERSON, Trustee, and the Secured Creditors under the Deed of trust, & J. W. JEFFERSON, Defendants.

JANUARY 17TH, 1885.

And now on this day come the parties hereto, and the said defendants, J. W. Jefferson, trustee, and secured creditors under the deed of trust, and J. W. Jefferson, object to the order of this court dismissing the suit as to J. T. Jefferson, and asks that the record show that said order of the court permitting said suit to be dismissed as to J. T. Jefferson should show that said suit was dismissed as to him after he had filed his petition with affidavit and bond for removal of this cause to the United States district court for the eastern district of Arkansas, at Helena, Ark., and asks that the record should show this fact, which the court doth grant to the entry of this order, the pl'ff, J. B. Driver, as adm'r aforesaid, & Mrs. N. A. Edrington, objected to at the time.

175 JANUARY 17TH, 1885.

N. A. EDRINGTON, EX., *vs.* J. W. JEFFERSON, Trustee, and Others.

Now on this day the plaintiffs have dismissed the complaint as to J. T. Jefferson; he thereupon withdraws his application to move this cause to the Federal court at Helena, heretofore filed.

JOHN B. DRIVER, Administrator *de bonis non*, with the Will annexed, of James H. Edrington, Deceased,

vs.

JOHN W. JEFFERSON, Trustee, J. T. JEFFERSON, and Others.

Ch'y. No. 388.

JANUARY 17TH, 1885.

Upon motion of defendant, J. W. Jefferson, by his solicitors herein, on this January 17th, 1885, to remove this suit into the district court of the United States for the eastern district of Arkansas, as at Helena, in pursuance of his petition, affidavit, and bond, before this time filed in this court, and the court having heard and considered said motion, and being of opinion that said petition presents a proper case of removal under act of Congress in such cases, and said bond presented being — due form and in the sum of $1,500.00, and the security therein being good and sufficient, the court doth approve said bond and grant the motion for removal of said cause into the district court of the United States for the eastern district of Arkan-

176 sas, at Helena, and the clerk of this court will cause a duly certified transcript of the record in this cause to be removed into the said district court of the United States on or before the first day of its next term at Helena; to which ruling of the court the plaintiff excepted at the time.

JOHN B. DRIVER, Administrator *de bonis non*, with the Will annexed, of James H. Edrington,

vs.

J. W. JEFFERSON, Trustee, and Others.

JANUARY 27TH, 1885.

This cause was further considered on this 27th day of January, 1885, one of the days of the January term, 1885. Motion of complainants, Driver and Edrington, by counsel, to reconsider the orders of removal of this cause entered herein on January 17th, 1885, and the court being advised in the premises, doth hereby revoke and rescind said order granting the removal of this cause, and this rehearsing of the motion at a subsequent day of the present term was, by agreement of counsel in open court, at the date the 1st order was made; to which ruling of the court in setting aside said decree of removal of this suit heretofore entered January 17th, 1885, and refusing to remove said cause to the Federal court at Helena as prayed, the defendants, J. W. Jefferson and John W. Jefferson, trustee, except and ask to have said exceptions noted of record, which is done accordingly.

177 Record, p. 1539.

Certificate of Transcript.

STATE OF ARKANSAS, *County of Mississippi:*

I, Hugh R. McVeigh, clerk of the circuit court, in and for the county and State aforesaid, duly elected, qualified, and acting, do hereby certify that the foregoing one thousand five hundred and thirty-eight (1,538) pages, numbered consecutively from one to 1,538, both inclusive, contain a true, full, and perfect transcript of all the original papers, pleadings, depositions, filings, etc., and all the orders of the court now on file and of record in my office as said clerk of the circuit court of Mississippi county, Arkansas, in cause now pending in the circuit court of Mississippi county, Arkansas, on the chancery side thereof, wherein John B. Driver as executor of the estate of the late James H. Edrington, deceased, with the will annexed, as successor to Nancy A. Edrington, late executrix of said estate of the late James H. Edrington, deceased, is plaintiff and J. W. Jefferson, trustee; J. T. Jefferson, John Matthews, and others as defendants in the original complaint, and J. W. Jefferson (not the trustee) and J. J. McComb, individually, are defendants in amended complaint and answer to cross-complaint, and The Washington Fire & Marine Insurance Co., The Planters Insurance Co., of Memphis, Tennessee, are complainants, and John B. Driver as administrator *de bonis non*, with the will annexed, as the successor of Nancy A. Edrington, late executrix, etc., John Matthews, and others are defendants in the cross-complaint.

178 Filed, had, and done since the commencement of said cause in said circuit court of Mississippi county, Arkansas, up to the present date, and that I am the proper custodian of all of said original papers, pleadings, filings, etc., and orders of court aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Osceola, Arkansas, on this the 11th day of February, 1885.

HUGH R. McVEIGH,
Clerk of the Circuit Court of Mississippi County, Arkansas.

Fee for making above transcript and index, $140.00; paid by J. W. Jefferson, trustee, and J. W. Jefferson, individually, February 24th, 1885.

HUGH R. McVEIGH,
Clerk Circuit Ct, Miss. Co., Ark.

Filed in the United States district court, at Helena, this 3rd day of March, 1885.

SAMUEL I. CLARK, *Clerk.*

179 In the Circuit Court of the United States for the Eastern District of Arkansas. March Term, A. D. 1885.

NANCY A. EDRINGTON and JOHN B. DRIVER, Adm'r of the estate of James H. Edrington, deceased, Plaintiffs,

vs.

JOHN W. JEFFERSON, Trustee, J. W. JEFFERSON, *et al.*, Defendants.

Come the plaintiffs and move the court to remand this cause to the State court from which it came for want of jurisdiction in this court to try and determine the same for these:

1st. It does not appear that said cause was removed at or before the first term of said State court at which said cause might have been first tried and determined.

2nd. The Supreme Court of the United States reversed and remanded this cause to this court with instructions to remand the same to the State court, for the rea-son said Supreme Court nor this court had jurisdiction to try and determine the same.

3rd. It appears from the pleadings and proof in this cause that J. W. Jefferson, one of the defendants, and the only one who seeks to remove said cause to this court, is a citizen of the State of Tennessee, where the plaintiff, Nancy A. Edrington, resides, and is a citizen of said State, and the controversy in said cause is not wholly between citizens of different States.

4th. It appears from the pleadings in this cause that J. W. Jefferson is the only one of the defendants who seeks to remove the same from the State court to this court.

5th. It appears from the pleadings and proof in this cause that the controversy herein is not wholly between citizens of differ-

180 ent States, for that of the complainants in the cross-bill, J. T. Jefferson, The Planters' Insurance Company, H. Wetter & Co., and part of the firm of Orgill Bros. & Co., are citizens of the State of Tennessee; and that of the defendants therein Sallie C. Edrington, Eugenia Edrington, Joseph B. Edrington, J. H. Edrington, Jr., heirs-at-law of J. H. Edrington, deceased; Penelope Fizer, Sam. B. McCauley, and Georgia B. McCauley, are also citizens of said State of Tennessee.

6th. It appears from the pleadings in this cause that the amendment making J. W. Jefferson a party defendant is merely ancilary to the main or principal cause of action, since he must admit his liability to either the plaintiffs or to the original defendants, and he cannot remove this cause on his petition alone from the said State court to this court.

7th. It does not appear from the pleadings in this cause that there was a controversy and issue of any kind in the State court; and if controversy there be between J. W. Jefferson and the plaintiffs, it did not arise in the said State court, and this cause is prematurely removed therefrom.

Wherefore said plaintiffs pray that this cause be by this court remanded to the State court from which came, etc., etc.

JOHN C. PALMER, GREER & ADAMS,
Att'ys for Plaintiffs.

(Endorsed thereon:) Filed March 30, 1885. Samuel I. Clark, clerk. Also: Filed Ap'r 20, 1885. Ralph L. Goodwich, clerk.

181 *Answer.*

In the United States District Court for the Eastern District of Arkansas, at Helena.

JOHN B. DRIVER, as administrator, etc., Plaintiff,
against
J. W. JEFFERSON, Defendant.

The defendant, J. W. Jefferson, for answer to plaintiff's supplemental complaint, says, for answer to paragraph second:

That he admits that he is in possession of the Fain and Whitmore plantations, which are particularly described by proper numbers in the pleadings in this cause; admits that on or about the 9 day of March, 1880, he and one J. J. McComb, believing themselves to be the owners of same, both in law and equity, under a purchase made at a judicial sale, on the 13 day of January, 1880, at Helena, in the State of Arkansas, by R. W. Nicholls, as master in chancery of the United States district court for the eastern district court of Arkansas, at Helena, and a deed duly executed by said master and approved by said court, conveying said lands to them, peaceably entered into possession thereof. Respondent states that afterwards, on the 26th day of April, 1880, said J. J. McCombs, by his deed of that date, conveyed his interest in said lands to him, this respondent, and surrendered possession of same to this respondent, which said deeds have been duly filed for record and recorded in said county of Mississippi and State of Arkansas, certified copies of which

182 are herewith filed, marked Exhibits 1 & 2, and made parts of this answer, the originals being held subject to the order of this court. Respondent denies that he is unlawfully in possession of said lands; says that he entered peaceably under said deeds, believing himself to be the owner of same, both in law and in equity; that said deeds are yet in full force, never having been in

any manner cancelled, set aside, or held for naught by any court or other lawful authority, nor has his possession been legally disturbed or questioned until the filing of this supplemental complaint, and he denies that his deed is void. He denies that he or the said J. J. McComb received $6,000.00, or any part thereof, which was in the hands of the receiver in this cause, but says it will appear from the report of R. W. Nicholls, the master of said United States district court, a copy of which is herewith filed, that the receiver, under order of said court, paid said money to said master, and the said master, under the orders of the said court, paid out said money, as well as an additional sum paid by this respondent and said McComb to said master, to persons other than this respondent or the said McComb, and that neither this respondent or the said McComb received any part of said money. Respondent denies that he is chargeable with the rent of 1,000 acres of land on said plantations; denies that there is that number of acres of cleared and tillable land thereon; says that when he and the said McComb went into possession as aforesaid there were 628 acres of tillable land thereon, and there since have been added thereto about thirty acres, making in the aggregate not exceeding 660 acres of cleared and tillable land now thereon. He denies that seven dollars per acre is a fair
183 average rental value for said lands; says that it will not exceed three dollars per acre per annum. He admits that he is now the owner of all or nearly all of the debts secured by the trust deed mentioned in the pleadings; states that he purchased some of them before his purchase of the said lands, and some of them since then. He says he purchased at as low a rate as the creditors would agree to, and that the rate varied from — to —; that as president of the Washington Fire and Marine Insurance Company, the largest of the trust creditors, he felt it his duty to try and collect that debt; that the trust creditors were numerous and widely scattered, and a successful prosecution of said suit required concentration of action; that in the prosecution of said suit he, as such president, had given much of his time and acquired a familiarity with the suit not possessed by the other creditors; that they were willing to sell, not being able to give their time to it, and invested his money in said debts, as he had a right to do, buying them in good faith and on fair representations as to the condition of the suit, and after the then representative of the estate of said Edrington had declined to purchase the said claims at a discount.

This respondent says that since he entered into possession of said lands as aforesaid he has in good faith, believing himself to be the owner of same, made large and valuable improvements thereon and paid the taxes annually accruing thereon, amounting in the aggregate, as far as he can now remember, to the sum of $13,864.48.
184 A bill of particulars of said improvements and taxes, so far as now can be remembered, and the cost of same, is herewith filed, marked Exhibit 3, and asked to be taken as a part of this answer; and respondent states that there may be other items not now remembered, which he asks to be permitted to prove on the hearing; that by this supplemental complaint his title to said lands is

judicially questioned. He asks that the same may be judicially investigated, and if it be found on trial that his title is not valid, that he may have judgment for the value of the improvements made by him and for the amount expended in taxes on same, and that he be only adjudged to account for three years' rent, as provided in the act of the General Assembly of the State of Arkansas, approved March 8, 1883, entitled "An act to be entitled An act for the better quieting of titles," and that he may have the benefit of said act.

And for answer to paragraph third, respondent, further answering, denies that he is indebted to the estate of James H. Edrington, deceased, or to John B. Driver, administrator thereof, for rent of the Fain and Whitmore plantations, or any other account for the year 1880, $7,000.00; with interest for 4 years at 6 per cent., 1,680.00; or for the year 1881, 7,000.00; and interest on same, 1,260.00; or for
the year 1882, 7,000.00; or interest on same, 840.00; or for
185 the year 1883, 7,000.00; and interest thereon, 420.00; or for the rent of same for 1884, 7,000.00; or that he owes for money drawn from receiver, 6,000.00; and interest thereon, 1,800.00.

He denies that he owes an aggregate of $47,000.00, or any other amount, as trustee or otherwise.

And having fully answered he prays to be hence dismissed, with his costs, etc.

TAPPAN & HORNOR,
MYERS & SNEED,
Sol'rs for Defendant, J. W. Jefferson.

Personally appeared before me, E. A. Long, notary public in and for the county of Shelby and State of Tennessee, J. W. Jefferson, respondent in the foregoing answer, who being duly sworn by me, says: That he believes the statements of the foregoing answer to be true.

[SEAL.] E. A. LONG,
Notary Public.

STATE OF ARKANSAS, *County of Phillips:*

D. E. Myers says he is attorney for defendant, J. W. Jefferson, who is now absent from the State Arkansas, and that he believes the statements contained in the foregoing answer are true.

D. E. MYERS.

Sworn to and subscribed before, this 30th day of March, 1885.
SAMUEL I. CLARK, *Clerk.*

186 This deed, made and entered into this — day of ——, 1880, by and between R. W. Nicholls, master in chancery of the United States district court for the eastern district of Arkansas, at Helena, party of the first part, and J. W. Jefferson and J. J. McComb, parties of the second part, witnesseth: That whereas at the regular October term, 1879, of the said United States district court for the eastern district of Arkansas, at Helena, it was, among other things, ordered, adjudged, and decreed by said court, in a certain cause therein pending, and on the chancery side thereof, wherein Nancy

A. Edrington, as executrix of the last will and testament of James H. Edrington, deceased, was complainant, and J. W. Jefferson, J. T. Jefferson, G. W. L. Crook, John Matthews, and Emily R. Hazard and John H. Hazard, adm'r of John H. Hazard, and others were defendants; that in the event the sum found due by said decree should not be paid to J. W. Jefferson, trustee, with interest, on or before the first day of December, 1879, the following lands in Mississippi county, Arkansas, viz: The southwest quarter of section thirty (30), in township thirteen north, range 11 east; the south half of section 25; the south of section 26; the southwest quarter of section 34, all in township 13 north, range 10 east, containing in all 902 acres, and known as the "Whitmore plantation;" also the following tracts or parcels of land in said county and State: The northwest qr. of section 36, in township 13 north, range 10 east; the northeast qr. of section 36, in township 13 north, range 10 east; also the southwest qr. of section 3, in township 12 north, range 10 east; also the
187 northwest qr. of section 31, in township 13 north, range 11 E., said last-named tracts of land being known as the "Fain plantation," should be sold at the court-house door, in the city of Helena, and State of Arkansas, for cash in hand to the highest bidder, by and under the direction of the said R. W. Nicholls, master as aforesaid, party of the first part, after such master had first given 20 days' notice of the time, terms, and place of sale as specified in the order and decree of said court; and whereas the said sum of money found due by said decree and interest not having been paid to the said J. W. Jefferson, trustee; and whereas the said R. W. Nicholls, as master as aforesaid and party of the first part to these present, in pursuance of the said decree of the said court, did on the 13th day of January, 1880, sell at public auction, at the door of the court-house, in the city of Helena, to the highest bidder upon the terms aforesaid, the said tracts of land, after having given twenty days' public notice of the time, terms, and place of sale and a description of said lands, in conformity with the direction of said decree, in the "Memphis Daily Appeal," a newspaper published in the city of Memphis, in the State of Tennessee, and in the "Osceola Times," a newspaper published in the town of Osceola, county of Mississippi, and State of Arkansas; and at such sale J. W. Jefferson and J. J. McComb became the purchasers of the said "Whitmore plantation," at and for the price and sum of fifteen thousand five hundred dollars, they being the highest and best bidders therefor, and at such sale also the said J. W. Jefferson and J. J. McComb became the purchasers
188 of the said "Fain plantation" at and for the price and sum of eleven thousand and twenty-five dollars, they being the highest and best bidders therefor, making the aggregate sum for the above-described lands bid by them as aforesaid the sum of twenty-six thousand five hundred and twenty-five dollars, and the said J. W. Jefferson having paid in cash the sum of eighteen hundred and seventy-five dollars, and having executed to the said master his receipt for eighteen thousand seven hundred and twenty-three $\frac{75}{100}$ dollars, and the said J. J. McComb having paid in cash the sum of

six hundred and twenty-five dollars, and having executed to the said master his receipt for five thousand three hundred and one and $\frac{25}{100}$ dollars, making in the aggregate the sum of twenty-six thousand five hundred and twenty-five dollars; and the said J. W. Jefferson and J. J. McComb being the beneficiaries under said decree and entitled to the proceeds of said sale and having executed their receipts to said master as aforesaid in accordance with the terms and provisions of said decree, and having demanded a deed therefor:

Now, therefore, this deed witnesseth: That the party of the first part, in order to carry into effect the sale so made in pursuance of the said decree, and in consideration of the sum of twenty-six thousand five hundred and twenty-five dollars cash in hand paid as aforesaid, of which said sum said J. W. Jefferson paid the sum of twenty thousand five hundred and ninety-eight $\frac{75}{100}$ dollars, and the said J. J. McComb paid the sum of five thousand nine hundred and twenty-six and $\frac{25}{100}$ dollars,
189 has this day granted, bargained, sold, and conveyed, and by these presents does hereby grant, gargain, sell, and convey unto the said J. W. Jefferson and J. J. McComb, their heirs and assigns, forever, the said hereinbefore-described tracts of land, to have and to hold the above-described tracts of land, together with all the rights, privileges, and appurtenances thereunto belonging, unto them, the said J. W. Jefferson and J. J. McComb, in the proportion which the sum paid by each as aforesaid bears to the sum total of the purchase-price paid for said lands, as aforesaid.

In testimony whereof the said R. W. Nicholls, as master, as aforesaid, has hereunto set his hand and seal this the day and year first above written.

R. W. NICHOLLS, [SEAL.]
Master in Chancery.

STATE OF ARKANSAS, *County of Phillips:*

Be it remembered that on this day personally came and appeared before the undersigned, a notary public within and for the county and State aforesaid, duly commissioned and acting, R. W. Nicholls, to me well known as the grantor in the foregoing deed, and acknowledged that he had, as master in chancery of the United States district court for the eastern district of Arkansas, at Helena, executed the same for the uses and purposes and considerations therein mentioned and set forth.

Witness my hand and seal as such notary public on this, the 9th day of March, 1880.

[SEAL.] GREENFIELD QUARLES,
Notary Public.

190 STATE OF ARKANSAS, *County of Phillips:*

In the District Court of the United States, Eastern District of Arkansas, at Helena. At March Term, 1880.

Be it remembered that this day R. W. Nicholls came and appeared

in open court and produced his deed of conveyance to J. W. Jefferson and J. J. McComb, whereby he, as master of this court, under and by virtue of a decree of said court rendered at the October term, 1879, thereof, in the case of Nancy A. Edrington, as executrix of the last will and testament of James H. Edrington, as complainant, and John W. Jefferson, trustee, and others, defendants, conveyed to said J. W. Jefferson and J. J. McComb the following-described lands situate in Mississippi county, in the State of Arkansas, to wit: The southwest qr. of section 30, in township 13 north, range 11 east; south half of section 25; the south half of section 26; the southwest qr. of section 34, all in township 13 north, range 10 east, containing in all 902 acres, and known as the "Whitmore plantation;" also the following tracts or parcels of land, situate in said county of Mississippi and State of Arkansas, to wit: The northwest qr. of section 36, in township 13 north, range 10 east; the northeast qr. of section 36, in township 13 north, range 10 east; also the southwest qr. of section 3, township 12 north, range 10 east; also the northwest qr. of section 31, in township 13 north, range 11 east, said last-named tracts of land being known as the "Fain plantation," and acknowledged that he had signed, sealed, and delivered the same for the uses, purposes, and consideration therein expressed.

It is thereupon ordered, adjudged, and decreed by the court
191 that the said deed be, and the same is hereby, approved and confirmed in all things; and it is further ordered and adjudged by the court that all the right, title, and interest, both legal and equitable, of said complainant, Nancy A. Edrington, both as executrix of the last will and testament of James H. Edrington and individually, and of the defendants, John W. Jefferson, trustee, and Emily R. Hazard and John H. Hazard, both individually and as administrator and administratrix, and sole heirs-at-law of James H. Hazard, deceased, and James H. Edrington, William Bard Edrington, John P. Edrington, Joseph P. Edrington, Sallie Edrington, Eugenia Edrington, Irene (or Reña) Edrington, Emily Hazard Edrington, and Nancy Edrington, children and heirs-at-law of James H. Edrington, deceased; Penelope Fizer, Samuel B. McCauley, and Georgia B. McCauley, and J. C. Neeley, S. H. Brooks, and H. M. Neely, partners as Brooks, Neely & Co., and James D. Driver, and all other parties to this cause, be, and the same is hereby, divested out of them, and each and every one of them, and vested in the said J. W. Jefferson and J. J. McComb, their heirs and assigns, in fee simple forever.

It is further ordered that a copy of this order be endorsed upon said deed, and that the same be properly certified by the clerk and entitled to record.

I, S. P. Delatour, clerk of said court, do hereby certify that the above is a true and perfect copy of the order and acknowledgment taken in open court, as the same appears of record in my office.

Witness my hand and seal of said court, at office in Helena, this 9th day of March, 1880.

[SEAL.] S. P. DELATOUR, *Clerk.*

192 STATE OF ARKANSAS, *County of Mississippi:*

I, James K. P. Hale, clerk of the circuit court and *ex-officio* recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 4th day of May, 1880, and the same is now duly recorded in record book, vol. 9, pages 50, 51, and 52.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 12th day of May, 1880.

[SEAL.] JAMES K. P. HALE, *Clerk*,
By HUGH R. McVEIGH, *D. C.*

193 *Ex. No. 2 to Answer of J. W. Jefferson.*

This indenture, made and entered into this, the 26th day of April, 1880, by and between J. J. McComb, of New York, of the first part, and J. W. Jefferson, of Memphis, Tennessee, of the second part, witnesseth, that for and in consideration of the sum of thirty-five hundred dollars to him in hand paid by the said Jefferson, the said J. J. McComb hath, and doth by these presents bargain, sell, alien, and convey unto said J. W. Jefferson, his heirs, and assigns all the right, title, and interest which said McComb owns or claims in the following property, being and lying in the State of Arkansas, county of Mississippi, near the town of Osceola, Arkansas, to wit: The southwest q'r of section 30, in township 13 north, range 11 east, the south half of section 25, the south half of section 26, the southwest q'r of section 34; all in township 13 north, range 10 east, containing in all 962 acres, and known as the "Whitmore Plantation." Also in the following tracts or parcels of land in said county and State of Arkansas, to wit: The northwest q'r of section 36, in township 13 north, range 10 east, the northeast q'r of section 36, in township 13 north, range 10 east; also the southwest q'r of section 3, in township 12 north, range 10 east; also the northwest q'r of section 41, in township 13 north, range 11 east. Said last tract of land being known as the "Fain Plantation." The interest herein conveyed by said J. J. McComb being that acquired by him under and by virtue of deed executed to said McComb and Jefferson by R. W. Nicholls, master in chancery, under a decree of the district court of the United States, eastern district of Arkansas, at Helena,

194 in the cause of Nancy A. Edrington, executrix of the last will and testament of James H. Edrington, against J. W. Jefferson, trustee, *et al.* But said McComb makes this conveyance without warranty of title, or warranty against encumbrances, except as to title of persons claiming by, through, or under him, and except as to liens or encumbrances which are, or may be, created by himself, it being understood and agreed that said McComb hereby conveys only such interest as he has acquired by virtue of said decree in aforesaid cause, and the deed made in pursuance thereof; and that the said Jefferson takes the same at his own risk, and subject to all incumbrances and defects of title, except such as are, or may be, created by McComb himself. And whereas there has been an appeal prayed from the decree in the cause of Nancy A. Edrington, execu-

trix, against J. W. Jefferson *et als.* to the Supreme Court of the United States, by which appeal a reversal of said decree is sought; now, therefore, should said decree be reversed and set aside and the interest of said J. J. McComb in the property herein conveyed be declared different from or other than the interest described in said decree as it now stands, then or in that event said J. W. Jefferson is to stand the loss of said reversal of said decree, and have no redress therefor against said McComb, the object of this instrument being to convey to said Jefferson only such interest as said McComb owned by virtue of said decree as it existed at the date the same was made by the court below, together with all right or interest said McComb, as managing partner of the American Cotton Tie Com-
195 pany, owned by reason of the judgment or claim he held against the defendants in said suit of Nancy A. Edrington, executrix, *vs.* J. W. Jefferson *et als.*, before mentioned in the probate court of Mississippi county, Arkansas, and without warranty on the part of said McComb. And said J. J. McComb, as a further consideration for said thirty-five hundred dollars aforesaid, doth hereby sell, transfer, and assign to said J. W. Jefferson all right, title, interest, and claim in, to or by virtue of a claim due by Jefferson & Edrington to him, both individually and as managing partner of the American Cotton Tie Co., mentioned in and secured by a trust deed of date March 19th, A. D. 1874, registered in the register's office of Mississippi county, Arkansas, made by J. H. Edrington and Nancy A. Edrington, his wife, to one J. W. Jefferson, trustee, together with any judgment liens, privileges, and rights heretofore possessed and owned by said McComb, managing partner as aforesaid, as holder of said claim, with the right and power to enforce the collection thereof as fully and effectually as is now possessed by said McComb as aforesaid, without any recourse on said McComb by reason of the assignment of said claim or otherwise, the intention of said McComb being only to convey his interest individually and as managing partner aforesaid, without any liability whatever.

It is further agreed and understood by the parties to this conveyance that said J. W. Jefferson shall and does hereby assume to the exoneration of said McComb all liabilities for costs, expenses,
196 penalties, or damages of every kind which have accrued and are unpaid; and all costs, expenses, suits, penalties, attorney's fees or damages of every kind which may hereafter accrue in or grow out of said suit of Nancy A. Edrington, executrix, *vs.* J. W. Jefferson *et al.* or the subject-matter therein involved, or to which said McComb may be subjected by reason of this conveyance, or of his relation to the property and interests herein conveyed, and to save said McComb harmless from any and all such liabilities. In other words, said Jefferson is to take the place of said McComb in relation to said suit, and the property and claims herein conveyed, taking all the rights and privileges, and assuming all the liabilities of such relation from the date of the confirmation of said sale March 9th, 1880, and the master's deed aforesaid. To have and to hold the above-described lands, tenements, and hereditaments, together with all the rights, privileges, and appurtenances thereunto belong-

ing, and also the claim or claims aforesaid, with all the rights appertaining thereto unto said J. W. Jefferson, his heirs and assigns forever.

In witness whereof said J. J. McComb and J. W. Jefferson have hereunto set their hands and affixed their seals on the day and year above written.

J. J. McCOMB. [SEAL.]
J. W. JEFFERSON. [SEAL.]

Witness-:
B. W. WILLIAMS, JR.
ALBERT GURNEE,
As to J. J. McComb.

197 STATE OF NEW YORK, } ss:
County of New York, }

On this 29th day of April, 1880, before me personally came J. J. McComb, to me personally known to be one of the individuals described in and who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein mentioned.

[SEAL.] B. W. WILLIAMS, JR.,
Notary Public for C. & C. N. Y.

STATE OF ARKANSAS, *County of Mississippi:*

I, James K. P. Hale, clerk of the circuit court, and *ex-officio* recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 4th day of May, 1880, and the same is now duly recorded in Record Book, vol. 9, pages 53, 54, & 55.

In testimony whereof I have hereunte set my hand and affixed the seal of said court, this 12th day of May, 1880.

JAMES K. P. HALE, *Clerk.*
[SEAL.] By HUGH R. McVEIGH, *D. C.*

STATE OF TENNESSEE, *City of Memphis:*

COMMISSIONER'S OFFICE, No 8 MADISON ST.

I, Hunsden Carey, a commissioner of the State of Arkansas, duly appointed by the Governor thereof, for the State of Tennessee, to reside in the city of Memphis and take acknowledgment and
198 proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions, etc., to be used or recorded in said State of Arkansas, do certify that on this 3rd day of May, in the year of our Lord one thousand eight hundred and eighty, before me appeared in person J. W. Jefferson, to me personally well known as the person whose name appears upon the within and foregoing instrument as the party grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Memphis aforesaid, the 3rd day of May, 1880.

[SEAL.] HUNSDON CARY,
Commisssoner.

199 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a regular term of the district court of the United States for the eastern district of Arkansas, begun and holden at the Federal court-room, in the city of Helena, on the 2nd Monday in March, A. D. 1885, the same being the 9th day of said month, there was present and presiding Hon. Henry C. Caldwell, judge of said court, D. B. Russell, marshal of said district, and Samuel I. Clark, clerk of said court, when among other proceedings had were the following, on the 30th day of March, 1885, a day of said term, viz:

JOHN B. DRIVER, Administrator, *vs.* J. W. JEFFERSON *et. als.*

Now on this day comes the plaintiff, John B. Driver, by J. C. Palmer, and E. F. Adams, his attorneys, and J. W. Jefferson, by Myers & Sneed and Tappan & Hornor, his attorneys, and said J. W. Jefferson, files his answer to the supplemental complaint herein, and said plaintiff files his motion to remand this cause to the circuit court of Mississippi county, Arkansas, and thereupon the court orders that the papers in this cause be by the clerk of this court transmitted to the clerk of the circuit court of the United States for the eastern district of Arkansas at Little Rock, and that this cause hereafter progress in said court, and that the hearing of the motion to remand be set down for argument on the 3rd Monday in April next.

200 We agree that the clerk of this court may copy the within process and send same to Little Rock.

MYERS & SNEED,
TAPPAN & HORNUR,
For Defendant.
GREER & ADAMS,
For Mrs. Edrington & J. B. Driver Adm'r.

Mandate.

Supreme Court United States. October Term, 1883.

EDRINGTON, etc., *vs.* JEFFERSON, *et. al.* } No. 244.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable judges of the district court of the United States for the eastern district of Arkansas, Greeting:

Whereas, lately in the district court of the United States for the eastern district of Arkansas, before — in a cause between Nancy A.

Edrington, individually, and as executrix of James H. Edrington, deceased, complainant, and J. W. Jefferson, J. T. Jefferson, John Matthews, Emily R. Hazard, and John H. Hazard, administrators of James H. Hazard deceased, The Washington Fire & Marine Insurance Company *et. al.* defendants, (in bill), and The Washington Fire & Marine Insurance Company *et. al.*, complainants, and
201 Nancy A. Edrington, individually and as executrix of James H. Edrington, deceased, *et. als.*, defendants, (in cross-bill,) wherein the decree of the said district court, entered in said cause on the 4th day of October, A. D. 1879, is in the following words, viz:

"Now, on this day, come the parties complainant and defendants herein by their solicitors, and the court being sufficiently advised of what decree to render in this cause, which was argued and submitted to the court at the last term of this court on the original bill and amendments and replications thereto, and cross-bill and amended and supplemental cross-bill of defendants, The Washington Fire and Marine Insurance Company, The Planters' Insurance Company; George D. Appleton, Matthew D. Noyes and John B. Maude, composing the firm of Appleton, Noyes & Co.; J. C. Ward and J. C. Holst, comprising the firm of J. C. Ward & Co.; William W. Taylor and L. L. Taylor, composing the firm of Taylor Bros.; F. Banksmith, — composing the firm of F. Banksmith & Co.; J. J. McCombs, managing partner of the American Cotton Tie Company; Edmund Origill, G. L. Dennison, John T. Williams, and A. L. McKean, composing the firm of Orgill Bros. & Co.; H. Wetter and George Schmalz, composing the firm of H. Wetter & Co., and answers thereto; the cross-bill of Brooks, Neely & Co., and answers thereto; and the cross-bill of J. D. Driver, and answers thereto, replications to answers, exhibits, and proof. It is therefore ordered, adjudged, and decreed by the court that the original and amended bills of complainant, Nancy A. Edrington, as executrix of James H. Edrington, deceased be, and the same are hereby, dismissed, and that
202 the cross-bill of Brooks, Neely & Co., and said J. D. Driver be, and the same are hereby, dismissed. And it is further ordered, adjudged, and decreed by the court that James H. Edrington, deceased, in his lifetime, was indebted to John W. Jefferson, trustee, in the sum of twenty-eight thousand seven hundred and fifty-four dollars and twenty-one cents, which debt was evidenced by nine promissory notes, all dated March 16, 1874, to wit: One for three thousand two hundred and eigty-one $\frac{89}{100}$ dollars, payable November 15th, 1874; one payable January 15th, 1875, for three thousand two hundred and eighty-one $\frac{89}{100}$ dollars; one payable March 15th, 1875, for three thousand two hundred and eighty-one $\frac{89}{100}$ dollars; one payable May 15, 1875, for three thousand two hundred and eighty-one $\frac{89}{100}$ dollars; said notes being signed by J. H. Edrington, and bearing 8 per cent. interest from maturity until paid; also five other promissory notes as follows: One for two thousand six hundred and fifty-six $\frac{66}{100}$ dollars, payable November 15, 1874; one payable January 15, 1875, for two thousand six hundred and fifty-six $\frac{66}{100}$ dollars; one payable March 15th, 1875, for two thousand six hundred and fifty-six $\frac{66}{100}$ dollars; one payable May 15th,

1875, for two thousand six hundred and fifty-six $\frac{66}{100}$ dollars; and one payable November 15th, 1875, for five thousand dollars. Said five promissory notes made by J. H. Edrington and C. H. Gaylord, and bearing 8 per cent. interest from date until paid; that said debt is now due and wholly unpaid, and that the same is a lien upon the following-described land situate, lying, and being in the county of Mississippi, and State of Arkansas, to wit: The
203 southwest quarter of section 30, in township 13 north, range 11 east; the south half of section 25, the south half of section 26, the southwest quarter of section 26, the southwest quarter of section 34, all in township 13 north, range 10 east; amounting in all to 902 acres and known as the Whitmore plantation. Also the following tracts or parcels of land in said county and State, to wit: the northwest quarter of section 36, in township 13 north, range 10 east; northeast quarter of section 36, in township 13 north, range 10 east; also the southwest quarter of section 3, in township 12 north, range 10 east; also the northwest quarter of section 31, in township 13 north, range 11 east; said last-named tract of land being known as the Fain plantation.

It is further ordered, adjudged, and decreed that the mortgage executed by said J. H. Edrington in his lifetime on said tracts of hereinbefore described as the Whitmore plantation to secure a debt to James H. Hazard has been fully paid off and discharged, and the same is no longer any lien thereon; and that the purchase-money due from said J. H. Edrington to Samuel B. McCauley and Penelope Fizer, in her own right, and as guardian for Georgia B. McCauley, for the said hereinbefore-described tracts of land known as the Fain plantation, has been fully paid, and is no longer any lien on said Fain plantation.

It is further ordered, adjudged, and decreed that the said debt due to said John W. Jefferson, trustee, was a trust fund with which to pay certain creditors of the late firm of Jefferson & Ed-
204 rington; that of said creditors the following amounts are due and wholly unpaid, to wit: To the Washington Fire and Marine Insurance Company, $16,215.03, bearing interest from this date at 8 per cent. per annum; to Farrington & Howell, $803.84, interest at 8 per cent. from this date; to J. W. Gaff & Co., $997.57, interest at 6 per cent. from this date; to Chamberlain & Co., $252.00, interest at 6 per cent. from this date; N. Hoffheimer & Co., $413.10, interest at 6 per cent. from this date; to Taylor Bros., $1,565.31, interest at 6 per cent. from this date; to H. H. Mette, Sr., $3,442.49, interest at 6 per cent. from this date; to Orgill Bros. & Co., $691.38, interest at 6 per cent. from this date; to the Planters' Insurance Company, $2,954.82, interest at 8 per cent. from this date; H. Wetter & Co., $195.70, interest at 6 per cent. from this date; F. Banksmith & Co., $512.64, interest at 6 per cent. from this date; St. Louis Shot Tower Company, $557.99, interest at 6 per cent. from this date; H. Fitzgerald & Co., $1,012.50; interest at 6 per cent. from this date; Green & Lucas, $736.91, interest at 8 per cent. from this date; Appleton, Noyes & Co., $1,169.49, interest at 6 per cent. from this date; Woodruff & Co., $1,938.86, interest at 6 per cent. from this date;

Poinsitt, Wheatley & Co., $1,204.51. interest at 6 per cent. from this date; J. J. McComb, managing partner of American Cotton Tie Company, $10,159.63, interest at 6 per cent. from this date; Mrs. D. McCann, $477.68, interest at 6 per cent. from this date; Belmont Nail Works, $1,035.40, interest at 6 per cent. from this date; Menken Bros., $343.12, interest at 6 per cent. from this date; J. C. Ward & Co., $367.24, interest at 6 per cent. per annum from this date.

205 It is further ordered, adjudged, and decreed that under said sum of $39,189.08⅔-100, being the principal and interest of said notes, payable to the said J. W. Jefferson, trustee, with interest thereon at the rate of 8 per cent. per annum from this date until paid, shall be paid to R. W. Nicholls, the master in chancery of this court, on or before the 1st day of December, 1879, A. D.; that the said hereinbefore tracts of land shall be by said R. W. Nicholls, master as aforesaid, sold at public auction, to the highest bidder, at the court-house door, in the city of Helena, county of Phillips, and State of Arkansas, for cash in the hands, he first giving at least 20 days' notice of the time, place, and terms of such sale by an advertisement in some newspaper published in the city of Memphis, Tennessee, and an advertisement in a newspaper published in the county of Mississippi, State of Arkansas, if one — published therein; that the legal title to said tracts of land hereinbefore described as the Fain plantation be divested out of the said Samuel B. McCauley, Penelope Fizer, and Georgia B. McCauley, and vest in the purchasers under the conveyance of said master; that the funds now in the registry of this court be applied first to the payment of the costs of this suit, then prorated to the payment of the said hereinbefore described creditors of Jefferson & Edrington, whose claims are unpaid, and that the said master apply the proceeds arising from such sale to the payment of said debts prorated until the same are paid, and that he report his proceedings herein to the next term of this court, and that J. D. Driver, the special receiver in this cause, at

206 at once and without delay pass his fund account into the office of the master of this court.

It is further ordered, adjudged, and decreed that the present tenants of said plantation shall not be disturbed in their possession during the present year and until they have a reasonable opportunity to gather the crop of this season, as by the inspection of the transcript of the record of said district court, which was brought into the Supreme Court of the U. S. by virtue of an appeal taken by Nancy A. Edrington individually, and as executrix of James H. Edrington, deceased, agreeably to the acts of Congress in such cases made and provided fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and eighty-three, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel, on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed, with costs, and that the said Nancy A. Edrington, individually and as executrix of James H. Edrington, deceased, re-

cover against the said J. W. Jefferson *et als.* one thousand two hundred and seventy-six and eighteen cents for the costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said district court, with directions to remand the case to the State court, from which it was improperly removed May 5, 1884.

207 You are, therefore, hereby commanded that such execution and further proceedings be had in said cause in conformity with the opinion and decree of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the twenty-first day of May, in the year of our Lord one thousand eight hundred and eighty-four.

Costs of Nancy A. Edrington, individually, etc.:

Clerk	$397 77
Printing record	858 41
Attorney	20 00
	$1,276 18

Taxed by—

JAMES H. McKENNEY,
Clerk of the Supreme Court of the U. S.

Endorsed: Filed October 14th, 1884. Samuel I. Clark, clerk.

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

I, Samuel I. Clark, clerk of the United States district court for the eastern district of Arkansas, at Helena, hereby certify that the above and foregoing is a true and perfect transcript of the matters and things therein set forth as the same appear on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Helena, this 18th day of April, A. D. 1885.

[SEAL.] SAMUEL I. CLARK,
United States Dist. C't Clerk.

Endorsed: Filed April 20th, 1885. Ralph L. Goodrich, clerk.

208 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday the 13th day of April, anno Domini one thousand eight hundred and eighty-five, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, judge of the eighth judicial circuit, and Hon. Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on April 22nd, 1885:

JOHN B. DRIVER, Administrator *de bonis non* of the Estate of James H. Edrington, *et al.*,
v.
J. W. JEFFERSON, Trustee, J. W. JEFFERSON, *et. al.* } 751.

Come the plaintiffs, by E. F. Adams and U. M. & G. B. Rose, Esq's, their solicitors, and come the defendants by Meyers & Sneed and Tappan & Horner, Esq's, their solicitors, and the court being now well and sufficiently advised of the matters arising on the motion to remand this cause to the State court, whence it came, considers that the same be sustained; to which ruling of the court the defendants, by their solicitors, except, and pray an appeal to the Supreme Court.

It is ordered by the court that the bond for costs herein be fixed at two hundred and fifty dollars ($250.00), and the supersedeas bond at four thousand dollars ($4,000.00), and the parties file herein their stipulation as to what parts of the record is to go to the Supreme Court, which is as follows:

In this cause it is hereby stipulated and agreed by and be-
209 tween the parties hereto, and their respective solicitors, that on the appeal in this cause the following parts of the record only shall be copied and certified by the clerk of this court to the said Supreme Court of the United States, to wit:

1. The original bill and all other pleadings in the cause, but no exhibits to be copied.

2. The *procedendo* from the Supreme Court of the United States in this cause, and the order of this court remanding the same to the circuit court of Mississippi county, Arkansas, in pursuance thereof.

3. All orders and decrees made in this cause, except the decrees and orders on the receivership of John Matthews.

4. The petitions and bonds for removal from the State court, and all orders and decrees thereon, but any order or decree copied under any one clause of this agreement not to be again copied under any other clause.

It is further stipulated by the said parties in this cause that the foregoing parts of the record shall constitute the whole record necessary for this appeal, and it may be heard by the Supreme Court of the United States upon the same; but inasmuch as this cause has been once to the said Supreme Court under the style of Nancy A. Edrington, executrix, *vs.* J. W. Jefferson, trustee, *et al.*, and nearly the whole record is printed and on file in said court, it is further stipulated and agreed between the parties that either party may refer to said printed transcript in said cause for any matter, and the court may consider the same as though the same was copied herein, and to the same effect.

Further, it is agreed that at the time of the filing of the original bill herein Mrs. Nancy A. Edrington, the plaintiff, and the heirs of James H. Edrington were citizens of the State of Arkansas,
210 but at the time of filing of the supplemental bill by John B. Driver, as administrator *de bonis non* of J. H. Edrington against J. W. Jefferson for rents and profits, filed January 16th, 1885,

said Mrs. Edrington and all of said heirs except W. B. Edrington were citizens of the State of Tennessee, and had been long prior thereto.

(Signed) MYERS & SNEED &
TAPPAN & HORNER,
Sol's for Defendants.
GREER & ADAMS &
U. M. & G. B. ROSE,
For Pl'ffs.

211 And on May 2, 1885, the following bond for costs was filed:

United States Circuit Court, Eastern District of Arkansas.

JOHN B. DRIVER, as Adm'r of J. H. Edrington,
v.
J. W. JEFFERSON, Trustee, *et al.*

I undertake to pay costs accruing in the above-entitled cause that may be adjudged against the defendant, J. W. Jefferson, to the amount of two hundred and fifty dollars.

Little Rock, Ark., May 2, 1885.

(Signed) JNO. D. ADAMS.

Endorsed: Filed May 2, 1885. Ralph L. Goodrich, clerk.

212 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of such parts of the record as are agreed upon by the solicitors representing each of the parties complainants & defendants, the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 1st day of October, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and tenth.

[The Seal of the Circuit Court, Arkansas District, U. S. A.]

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

Endorsed on cover: E. Arkansas C. C. U. S. No. 1083. J. W. Jefferson, trustee; J. T. Jefferson *et al.*, appellants, *vs.* John B. Driver, administrator *de bonis non* of James H. Edrington, deceased. Filed October 13, 1885.

117-272

IN THE

Supreme Court of the United States

J. W. JEFFERSON, Appellant,

vs.

JOHN B. DRIVER, *de bonis non*, AND OTHERS, Appellees.

Motion to Advance the Above Cause for Hearing, Under Rule 32.

This is a suit commenced in the circuit court of Mississippi county, in the State of Arkansas, by appellees against appellant and others; and by appellant and another removed to the Circuit Court of the United States for the Eastern District of Arkansas, under the Acts of Congress, and on motion of appellees, the said cause was by the said Circuit Court of the United States, remanded to the circuit court of Mississippi county, Arkansas, under section 5 of the Act of March 3d, 1875, from which judgment appellant prayed an appeal to this Court, which was granted, and transcript of the record filed in pursuance of the rules. And the said appellant now by his solicitors moves the Court to advance said cause on its docket, and set the same for hearing at as early a day as practicable.

JOHN J. HORNER,
D. E. MYERS,
W. M. SNEED,
Solicitors for Appellant.

We concur in the above motion, and ask that an early day be set for the hearing.

117-272

Office Supreme Court U. S.
FILED
FEB 8 1886
JAMES H. MCKENNEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1885.

J. W. JEFFERSON ET ALS., APPELLANTS,

vs. } No. 1083.

JOHN B. DRIVER, Administrator de bonis non of the Estate of James H. Edrington, deceased, APPELLEE.

BRIEF FOR APPELLANTS.

J. J. HORNER & J. C. TAPPAN,
D. E. MYERS & W. M. SNEED,
Attorneys.

S. C. TOOF & CO. PRS. & LITHS., MEMPHIS

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1885.

J. W. JEFFERSON ET ALS., APPELLANTS,

vs. } No. 1083.

JOHN B. DRIVER, Administrator de bonis non of the Estate of James H. Edrington, deceased, APPELLEE.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal from the judgment of the Circuit Court of the United States for the Eastern District of Arkansas, remanding this cause to the circuit court of Mississippi county, Arkansas, for trial.

And the facts are as follows: Prior to March, 1874, there existed in Memphis, Tenn., the mercantile firm of Jefferson & Edrington, composed of J. T. Jefferson and James H. Edrington. Edrington was also a member of other firms, which owed Jefferson & Edrington some $28,700, and he was also a large land owner in Mississippi county, Arkansas. In February, 1874, the firm of Jefferson & Edrington became embarrassed, and in order to get an extension, J. H. Edrington *and his wife, Nancy A. Edrington*, on March 16th, 1874, executed a trust deed to John W. Jefferson, trustee, on the Fain & Whitmore plantations

in Mississippi county, Arkansas, for the purpose of securing the creditors of Jefferson & Edrington in the sum of $28,784 with interest thereon.

[NOTE.—*There are now two parties to this record named J. W. Jefferson, and not related*, and for convenience we shall designate them as J. W. Jefferson, trustee, and J. W. Jefferson, *not* the trustee. J. W. Jefferson (*not* the trustee) is not related to J. T. Jefferson, another defendant.]

On August 12th, 1874, after the execution of said trust deed, J. H. Edrington died, and the widow, Nancy A., qualified as the sole executrix of his estate in Mississippi county, Arkansas, (she being a citizen of that county and State), and entered upon the duties of her office.

The notes and claims secured by said trust deed, not having been paid at maturity, J. W. Jefferson, trustee, advertised the said plantation for sale in pursuance of the powers in said deed; the sale to take place on January 21, 1875. Transcript page 2.

Whereupon, on December 11, 1874, the said Nancy A. Edrington, as executrix of the last will and testament of James H. Edrington, deceased, filed her bill in the circuit court of Mississippi county, Arkansas, against J. T. Jefferson, John W. Jefferson, trustee, et als, for an account and settlement of the late mercantile firm of Jefferson & Edrington, charging that the defendant, J. T. Jefferson, and her testator in his lifetime were co-partners in business in Memphis, Tennessee, under the firm name and style of Jefferson & Edrington; that her testator was affected by disease to an extent which rendered him incapable of giving his personal attention to business; that the defendant, J. T. Jefferson, in the lifetime of her testator, fraudulently converted the assets of said firm to his own uses, amounting to about $40,000; that said J. T. Jefferson, by his worry

and annoyance, procured the testator to execute a deed of trust on the "Fain & Whitmore" plantations, in Mississippi county, Arkansas, to secure a certain firm indebtedness; that after the death of her testator, said J. T. Jefferson fraudulently converted the firm assets to his own use, and never accounted for the same, and that said J. T. Jefferson, and not the creditors, was then seeking to have said land sold under the deed of trust for the purpose of shifting the responsibility from his own shoulders, even to the destruction of the estate, with a prayer for an injunction restraining the sale of said lands; that defendant J. T. Jefferson be required to produce the books of Jefferson & Edrington in court, with a balance sheet, showing the condition of said firm, and for an account between the surviving partner and the estate, and that the surviving partner (J. T. Jefferson) be required to account particularly for the $18,000 of goods on hand at the execution of the deed of trust, and the $40,000 of mercantile assets. Transcript pages 1 to 4.

Three amendments were filed, charging fraud upon J. T. Jefferson in the management of the assets of the firm, and praying relief against him. Transcript pages 6, 7, 53.

J. T. Jefferson and J. W. Jefferson, trustee, answered the original and amended bills at the March and September terms, 1875. Transcript pages 9–15.

The beneficiaries under the trust deed were afterward made parties defendant on their own motion, and on February 28, 1875, filed their answer and cross-bill, making John Matthews, the agent of the executrix, also a party thereto, praying for a foreclosure of the trust deed and sale of the land embraced therein. Transcript page 21.

The executrix and John Matthews answered the cross-bill. At the November term, 1876, after making J. W. Jefferson, trustee, party complainant to cross-bill, and certain dismissals, the remaining defendants removed this cause to the United States District Court at Helena, it having circuit court jurisdiction in the Eastern District of Arkansas. Transcript pages 46–50–55–56.

Thus it will be seen that at the time of the *commencement of the suit, and up to the removal and during its pendency in the Supreme Court, N. A. Edrington, as executrix of the estate of James H. Edrington deceased, was the sole* complainant in her *representative* capacity, and was a citizen of the State of Arkansas.

After removal to the United States Circuit Court, such proceedings were had in that court as resulted in a final decree on the merits at the October term, 1879, in favor of the defendant, cross-complainants, a foreclosure of the trust deed and sale of the two plantations. Transcript page 69.

On January 13, 1880, said lands were sold by the Master in pursuance to the decree, and *J. W. Jefferson, not the trustee*, and J. J. McComb became the purchasers, and paid the entire purchase money. The deed was made by the Master and approved by the court, and J. W. Jefferson, *not* the trustee, one of the purchasers, went into possession of the same. Transcript 72–74–75.

And on April 26, 1880, J. J. McComb sold and conveyed to said J. W. Jefferson, *not* the trustee, his entire interest in said plantations. Transcript 76–87–101.

From the final decree in the Federal Court, complainant N. A. Edrington, the executrix, prayed an appeal to the Supreme Court without supersedeas, which appeal was

perfected about two years afterward; the cause was tried in this honorable court at its October term, 1883, to-wit, May 5, 1884, and it was held that this court had no jurisdiction because the removal was not in apt time. The decree was reversed and cause remanded to the circuit court at Helena, with directions that it remand the same to the circuit court of Mississippi county, Arkansas, which was done on the — day of January, 1885 Transcript 104.

In the meantime, and before the cause was remanded and redocketed in the circuit court of Mississippi county, Arkansas, the original complainant, Nancy A. Edrington, resigned her executorship in Mississippi county, Arkansas, and *John B. Driver, a citizen of said county and State*, qualified as administrator *de bonis non* with the will annexed, of said J. H. Edrington deceased, in the place of said Nancy A , resigned. Transcript 75–76.

And after said cause was remanded to the State court, to-wit: on January 17, 1885, on the application of John B. Driver, administrator, etc , he was made a party complainant thereto in lieu of the said Nancy A. Edrington, executrix, resigned, and the cause ordered to progress in his name as complaint. Transcript 91.

And the said John B. Driver, as administrator *de bonis non* of J. H. Edrington, deceased, on January 16, 1885, filed his amended and supplemental bill in this cause against J. W. Jefferson, *not* the trustee, in which complainant seeks, in behalf of said estate, to recover from said Jefferson the rents and profits of said lands so purchased by him under the decree in this cause. Transcript page 75.

[NOTE.—*This was the first time that J. W. Jefferson, not the trustee, was ever a party to this cause in any capacity.*]

At said term, to-wit: January 17, 1885, J. W. Jefferson, *not* the trustee, entered his appearance. Transcript page 91.

And on the same day presented his petition, affidavit and bond in proper form for removal of the cause to the Circuit Court of the United States for the Eastern District of Arkansas, both under the Local Prejudice Act and Act of 1875. Transcript 85 to 91 inclusive.

The bond was approved by the court and removal ordered on the same day. Transcript page 92.

[NOTE.—At a subsequent day of the same term the court reconsidered the order for removal previously entered and assumed to vacate the same, to which appellants excepted. Transcript page 93.]

At the same term, to-wit: January 17, 1885, the defendant J. T. Jefferson filed his petition, affidavit and bond for removal of said cause as to himself, under the Local Prejudice Act, to the Circuit Court of the United States for the Eastern District of Arkansas. Transcript 81 to 85.

After the filing of said petition, affidavit and bond, the complainant, by leave of the court, dismissed the original and amended bill as to said defendant J. T. Jefferson, (Tr. 91), to which the defendants, J. W. Jefferson, *not* the trustee, and J. W. Jefferson, trustee, excepted. Transcript 92.

And *after this* J. T. Jefferson, in consideration of his not being then a party to the suit, withdrew his application for removal. Transcript 92.

The transcript of the record was duly filed in the Circuit Court of the United States, Eastern District of Arkansas, and the complainant appeared and filed his motion to remand. Transcript page 94.

And at the April term, 1885, of the said Circuit Court of the United States for the Eastern District of Arkansas,

the cause was remanded to the State court, and from this judgment the cause is brought by appeal to this Court.

It will be observed that at the date of the commencement of this suit Nancy A. Edrington, *as executrix* of the estate of James H. Edrington, deceased, in her representative capacity, and a citizen of Arkansas, was the sole complainant; nor was any change made in this regard until the said Nancy A. resigned her office of executrix, and complainant John B. Driver, *also* a *citizen of the State of Arkansas*, qualified as her successor as administrator *de bonis non, cum testamento annexo*, of J. H. Edrington, deceased, and *as* such, on his application, was, by order of the court, substituted as complainant in this cause in his representative capacity, in *lieu* of said Nancy A. Edrington, resigned, and the suit ordered to progress in his name as such. Transcript 91.

So that the sole complainant when said suit was commenced, was, and is now, a *citizen of the State of Arkansas.*

[NOTE.—Nancy A. Edrington in her *individual capacity never* was a complainant in said cause, and the paper recently filed by her in this cause, denominated as a fourth amended bill, amounts to nothing, and will of course be stricken out as such on the motion for that purpose filed herein. Transcript page 91.]

The defendant J. T. Jefferson was at the time the original suit was brought, and is now, a citizen of the State of Tennessee. Transcript 82.

And the defendant J W. Jefferson, *not* the trustee, was at the time the original suit was brought, and is now also, a citizen of the State of Tennessee. Transcript 82–87.

Defendant J. W. Jefferson, trustee, was at the time the suit was commenced also a citizen of the State of Tennessee, and is now a citizen of California. Transcript pages 3–82–86.

ASSIGNMENT OF ERRORS.

1st. The court erred in sustaining the motion of complainant to remand this cause to the State court from whence it had been removed.

2nd. The court erred in adjudging that it had no jurisdiction of this cause, and that the jurisdiction of the same was in the circuit court of Mississippi county, State of Arkansas, and in remanding same to said State Court.

3rd. The court erred in deciding that the State court had jurisdiction to permit the complainant in the original and amended bills to dismiss the same as to J. T. Jefferson, the principal defendant therein, after he had filed in said court a petition and bond in due form for removal to the Circuit Court of the United States for the Eastern District of Arkansas, and thereby defeat the jurisdiction vested in said court.

4th. The court erred in deciding that the State court had jurisdiction against the protest of the other defendants to permit complainant to dismiss the original and amended bills as to defendant J. T. Jefferson, and thereby retain jurisdiction after he, J. T. Jefferson, had filed his petition and bond for removal of the cause to the Circuit Court of the United States for the Eastern District of Arkansas, and while same were on file and the latter court had obtained complete jurisdiction of the parties and subject matter of said suit.

5th. The court erred in holding that J. T. Jefferson could withdraw his petition and bond for removal after complainant had dismissed the suit as to him.

6th. The court erred in holding that the proceeding against J. W. Jefferson, *not* the trustee, was such a suit as was not removable under the Acts of Congress.

SYNOPSIS.

Our contention is:

I.

That this cause was removed on the filing of the petition, affidavit and bond of J. T. Jefferson, because:

a. The controversy as to him was between the personal representatives of J. H. Edrington, deceased, citizen of Arkansas, and J. T. Jefferson, citizen of Tennessee.

b. It was separate and distinct, being, so far as he was interested, a bill for an accounting as to co-partnership assets of the firm of Jefferson & Edrington, while as to the other defendants it was a bill to cancel deed of trust of J. H. Edrington on ground of mental incapacity to execute same, and to enjoin sale of lands thereunder.

c. Being under *local prejudice act*, and filed before final trial, it was in apt time.

d. That upon the filing of the petition, affidavit and bond of J. T. Jefferson, the jurisdiction of the court as to *all the parties* and subject matter, was *eo instanti* transferred to the Circuit Court of the United States, and the jurisdiction of the State court then ceased for all purposes, and the jurisdiction of the Federal Court could not thereafter be ousted.

e. The jurisdiction of State court could not be restored by a dismissal of the bill as to J. T. Jefferson, because all power to act had ceased, and only the Federal Court could make an order therein.

f. The order of dismissal was made before the petition, affidavit and bond were withdrawn.

II.

It was removable on petition, affidavit and bond of J. W. Jefferson, *not the trustee*, because:

g. The supplementall bill of Driver, administrator, was essentially a suit against him for a money demand presented to the court for judicial determination, because the satisfaction of the demands in the original and cross-bills would not have discharged his liability for the demand in the supplemental bill.

h. The sole plaintiff was Driver, administrator, citizen of Arkansas, and sole defendant J. W. Jefferson, *not* the trustee, citizen of Tennessee.

i. Petition, affidavit and bond were filed, and before any trial could have been had.

j. The amount in controversy was $47,000.

k. It was a distinct and separate demand against J. W. Jefferson, *not* the trustee, and a separable controversy between complainant and him, because the judgment could only be rendered in favor of Driver, administrator, and against Jefferson, *not* the trustee.

ARGUMENT.

The questions presented on the record are two-fold. One arising on the petition of J. T. Jefferson, and the other arising on the petition of J. W. Jefferson, *not* the trustee, and as the petition and bond of J. T. Jefferson was in fact first filed, though both were filed on the same day, we will present first our argument on the law of the case arising on the petition of J. T. Jefferson.

I.

The petition, affidavit and bond for removal of defendant J. T. Jefferson, we submit, are in due form, and filed in the State court in apt time, viz: before any final hearing in the cause. The sufficiency of the bond appears from the affidavits of the sureties, and was not questioned. J. T. Jefferson was at the time of filing the original bill and at date of filing his petition and bond, a citizen of the State of Tennessee. And the sole complainant, both at date of commencement of suit and of filing petition for removal, was a citizen of the State of Arkansas. The complainant at commencement of suit being executrix of the will of James H. Edrington deceased, and the complainant at the filing of the petition for removal being the administrator *de bonis non* with the will annexed of said J. H. Edrington deceased, the said executrix having resigned, and the probate court of Mississippi county, Arkansas, having appointed an administrator *de bonis non*, who was, by order of the court, *as such* administrator, substituted as complainant, in lieu of the former complainant, resigned. Transcript, page 91.

In said suit there are other defendants, but we submit that as to this defendant J. T. Jefferson, there was, at the time said suit was commenced and at the time the petition and bond for removal were filed, a controversy therein, which was wholly between the complainant as the legal representative of the estate of J. H. Edrington deceased and the defendant J. T. Jefferson, which could be fully determined as between them, without the presence or intervention of the other parties thereto. A separable controversy between the complainant and this defendant. As shown by the original and amended bills, the allegations against defendant J. T. Jefferson are substantially—

"That for some time before the death of J. H. Edrington, complainant's testator, he and the defendant J. T. Jefferson were engaged as co-partners in the grocery and commission business, in the city of Memphis, Tennessee, under the firm name and style of Jefferson & Edrington; that for some time before Edrington's death he was afflicted with disease to such an extent as to incapacitate him for business; that during this time defendant J. T. Jefferson had the entire control of the business of the co-partnership; *that during that time he managed said business for his own profit and emolument, disregarding the interest of Edrington, and fraudulently converting the assets of the co-partnership to his own use.*"

"To carry out his designs on the co-partnership assets, said J. T. Jefferson by a persistent course of worry and annoyance, procured the execution by J. H. Edrington of a trust deed upon certain individual lands situate in Mississippi county, Arkansas, known as the *Fain & Whitmore plantation*, to secure about $28,000 of firm debts; that at the time of the execution of said trust deed the firm of

Jefferson & Edrington had goods and groceries in their storehouse of the value of about $18,000 at cash prices, and other assets, consisting of notes, bills. accounts, etc., amounting to about $40,000. All of which said J. T. Jefferson fraudulently converted to his own use and never paid one dollar of the firm indebtedness; that he agreed to execute a mortgage on his individual property to secure a part of the firm indebtedness, which he never did; and that he had procured the trustee in said deed of trust to advertise said Fain & Whitmore plantation for sale, and was the active mover in enforcing the execution of the trust, the creditors taking no steps therefor."

"That if said J. T. Jefferson were required to account for the co-partnership assets so fraudulently appropriated by him, there would be firm assets amply sufficient to pay the debts secured by said trust deed without a sale of individual property conveyed thereby."

The prayer of the bill is—

"That said J. T. Jefferson be required to produce the co-partnership books of Jefferson & Edrington in court, with a balance sheet, showing the condition of the firm of Jefferson & Edrington; that an account be taken between the complainant and the said J. T. Jefferson as surviving partner, and that he, Jefferson, be required to account particularly for the $18,000 worth of goods on hand at the execution of the deed of trust, and the $40,000 of other mercantile assets in his hands; and that in the mean time the sale of said plantation be enjoined, etc."

The allegations of the bill are denied by defendant J. T. Jefferson. Transcript, page 15.

The prayer for relief, as to the accounting for firm assets, is against J. T. Jefferson alone. The trustee, J. W. Jef-

ferson, was made a party because the legal title and power to sell was in him, and it was sought to stay the execution of this power until an account could be obtained from J. T. Jefferson.

As the executrix of the will of J. H. Edrington deceased, it was the duty of the complainant to collect the assets and protect the interests of the estate. The law gave to J. T. Jefferson as survivor of the late firm of Jefferson & Edrington, possession of the co-partnership assets and the right to collect and possess them, but it was coupled with the duty to account for same, and the executrix under the allegations of the bill was the proper person, and it was her duty to require an account. As J. T. Jefferson, as such survivor, alone possessed the co-partnership assets, he alone could bring in the firm books, make a balance sheet and render a full account as prayed for, and consequently, the decree would be against him *alone*.

The dismissal of the bill, as to all the other defendants, would not have extinguished the liability of defendant J. T. Jefferson to render the account prayed for, nor have released complainant from duty to enforce such accounting. It would not have affected the suit between complainant and J. T. Jefferson in any manner.

Hence, we confidently submit, as to said J. T. Jefferson, there was a separable controversy, such as is contemplated by the statute—"a controversy capable of pecuniary estimation fairly presented for judicial determination," and in which no one was interested except the complainant and defendant J. T. Jefferson.

Gaines v. Fuentes, 92 U. S. p. 20.
Hyde v. Ruble, Ib. p. 407.
Winchester v. Loud, 108 Ib. p. 180.

Revised Statutes Ark. Sec 4911 4912
Ames v Kansas, 111 U.S. 459-463
Boom v. Patterson, 98 U.S. 407

Assuming that the petition and affidavit are formal and bond sufficient; that they were filed in apt time; and that the cause was removable under the statutes of the United States, we must next consider the effect of the filing of the petition and bond. Our contention is, that from the presentation of same in the State court, the jurisdiction of that court ceased and the jurisdiction of the cause vested *eo instanti* in the United States Court, and from that instant of time the State court had no power to act in the cause.

The statute provides that on the filing of the petition and bond, "it shall thereupon be the duty of the State court to accept the surety and to proceed no further in the cause against the petitioner."

This language is unambiguous and has been repeatedly construed and adjudicated by this court, giving it its full force.

Railroad Company v. Mississippi, 102 U. S. p. 141.
Railroad Company v. Koontz, 104 Ib. p. 15.
Steamship Company v. Tugman, 106 Ib. p. 122.
Kern v. Huidekoper, 103 U. S. 491

In the light of the foregoing decisions it is manifest that the Circuit Court of the United States on the filing of the petition and bond, acquired jurisdiction of the subject matter of the cause and of *all* the parties to same. The removal as to defendant J. T. Jefferson carried the entire cause with it.

Barney v. Latham, 103 U. S. p. 205.
Kern v. Huidekoper 103 U.S. 491

The jurisdiction being once vested in the Circuit Court of the United States, it could not be taken away by any subsequent amendment in the State or Federal Courts, or

by release of part of the debt or damages claimed or otherwise.

Kanouse v. Martin, 15 How. p. 208.

Clark v. Mathewson, 12 Peters p 164.

Insurance Company v. Dunn, 19 Wall. p. 214.

Dillon on Removal of Causes pp. 93, 94, 3rd edition.

Desty on Removal of Causes p. 158.

N. Y. Silk Mfg. Co. v. Second National Bank of Pat., 10 Fed. Rep. 204.

Stewart v. Durham, 115 U.S. 61

The removal being completed as to J. T. Jefferson, and the jurisdiction of the Circuit Court of the United States having attached, as to the entire cause and all of the parties, the right of the defendants other than J. T. Jefferson to a trial in that tribunal was as much fixed as though they had rightfully petitioned themselves, and it was a statutory right of which they could not be deprived.

Gordon v. Longest, 16 Peters p. 97.

But it will be contended by adversary counsel that the State court never lost jurisdiction of this cause, and the Circuit Court of the United States never acquired jurisdiction of same under the filing of the petition and bond of J. T. Jefferson, for the reason that after the filing of said petition and bond the complainant, by leave of the court, dismissed the original and amended bills as to him, and afterward, and in consequence of such dismissal, said J. T. Jefferson withdrew his said petition.

It is not controverted that complainant had the power, in any court having jurisdiction, to dismiss his cause as to said Jefferson, but we hold that the dismissal of the cause after the filing of the petition and bond, could not be made in the State court, and if made in the United States Court

it could not affect the jurisdiction of that court as to the other parties to the suit, nor their right to be heard in that tribunal.

Kanouse v. Martin, 15 Howard p. 208.
Steamship Co. v. Tugman, 108 U. S. p. 122.
Railroad Co. v. Koontz, 104 U. S. p. 15.
N. Y. Silk Man'f'g Co. v. Second National Bank of Patterson, 10 Fed. Rep. p. 204.

In Kanouse v. Martin, after the defendant filed his petition and bond, the plaintiff attempted to oust the jurisdiction of the United States Court by amending his petition and claiming only four hundred and ninety-nine dollars damages. This court held that it could not be done, because the State court had no jurisdiction to "proceed further in the cause." In the case at bar, after the filing of the petition and bond, the plaintiff attempted to oust the jurisdiction of the United States Court by an amendment as to parties. If the one was a *proceeding* "further in the cause which the act of Congress forbids," the other certainly was.

While some of the parties to the cause may not have had the right to petition for removal, yet when one of the defendants, who did have such right, filed his petition and bond, the *right to the* removal at once inured to the benefit of all the parties, and each one acquired a fixed right to a trial in the United States Court, as much so as if the statute had given him the right to petition.

It is possible that counsel for appellees may insist that this cause is not removable by defendant J. T. Jefferson, because at the November term, 1876, he, with other defendants, filed a petition for the removal of this cause, and

it was subsequently adjudged by this court that the same was not filed in proper time and conferred no jurisdiction on the United States Court.

Edrington v. Jefferson, 111 U. S. p. 770.

As to this, we say that the first petition was filed strictly under the act of 1875, on the ground of citizenship, and claimed to be at the first term at which the cause was ready for trial, or could be tried. Transcript page 57.

This court remanded the cause for the reason that it found that the removal was not had at the first term at which it could have been tried under the statute.

The present petition for removal is filed under the act of 1867, sub-section 3, section 639. Revised statutes, known as the *Local Prejudice Act* and the *Separable Controversy* clause of Act of March 3, 1875. Tr. p. 83.

The grounds set out for removal in the two petitions are totally different and are under different statutes.

Under the act of 1867 it was expressly enacted that the petition might be filed at any time before the final trial of the cause, for the reason that the local prejudice might arise at any time before the trial and thereby deprive the party of an impartial hearing. While under the act of 1875, the cause for removal being citizenship alone, which must exist at the commencement of suit, the right to remove had to be exercised at or before the first term at which a trial could be had.

Therefore no policy of the law is contravened by the second petition for removal on a ground entirely different from the first, and for a cause which might not have existed when the first petition for removal was filed. And for

aught that appears in the record, may have arisen from the filing of the first petition and the remanding of the cause by this court.

St. Paul & Chicago R. R. Co. v. McLean, 108 U. S. pp. 212, 217.

Hess v. Reynolds, 113 U. S. p. 80, as to prejudice.

II.

But however the foregoing proposition may be, we insist that this suit was properly removed to the circuit court upon the petition of the defendant *J. W. Jefferson, not the trustee.* And in order to demonstrate this we beg leave to here give a more extended statement of the pleadings and facts than usual. The facts are as follows:

After this cause was remanded to the circuit court of Mississippi county, Arkansas, to-wit: at the January term of said court for 1885, and on the 16th day of said month, the complainant, John B. Driver, as administrator *de bonis non* with will annexed, of the estate of J. H. Edrington, deceased, filed in said court his supplemental bill against defendant J. W. Jefferson, *not* the trustee, making him a party defendant in this cause, *for the first time*, and charging that he was a resident and citizen of Arkansas; that he had succeeded Nancy A. Edrington in the administration of the estate of J. H. Edrington, deceased, and was then the duly qualified and acting administrator *de bonis non* of said estate; and also charging that said J. W. Jefferson, *not* the trustee, having taken possession of the Fain & Whitmore plantations under a purchase at the Master's sale, made under a void decree, is liable for the rents and profits of same since the entry, which he says are of the value of $7000 per annum, and also is chargeable with the

sum of $6000, which he says said Jefferson received from the receiver, making in all with interest, the sum of $47,000, for which he prays a decree against said Jefferson, *not* the trustee. Process is also prayed against said Jefferson. The bill also charges that said Jefferson, *not* the trustee, has become the owner of all the debts secured by said trust deed, by purchase during the pendency of suit and prior to the rendition of the void decree. It also charges that he was President and sole owner of the Washington Fire & Marine Insurance Company, and as such had always been a party to the suit.

We submit that the fact as to whether said Jefferson was or was not the owner of the trust debts will not affect his liability for rents and profits of the land It was the unlawful entry which created the liability. It is true that said J. W. Jefferson, *not* the trustee, was President of the Washington Fire and Marine Insurance Company, and as such President verified the answer of said company; but the corporation, and not its officers, was the party to the suit.

In pursuance of the motion in said supplemental bill, said John B. Driver, as administrator *de bonis non*, was substituted as complainant in said cause in lieu of former complainant Nancy A. Edrington as executrix resigned, and the cause ordered to proceed in his name. Tr p. 91.

After the filing of the supplemental bill and at same term of court, said defendant J. W. Jefferson, *not* the trustee, came in open court and entered his appearance to said supplemental bill, and thereupon filed his petition and bond for removal of said cause as to him to the Circuit Court of the United States for Eastern District of Arkansas. The

bond was approved and the removal ordered by the court. Tr. p. 91.

Subsequently and at same term of said court, the order of removal was by said court reconsidered and former order rescinded. Tr p. 93.

The petition for removal was founded both under the Local Prejudice Act, sub-sec 3 of section 639, Revised Statutes, and under the latter clause of the second section of the act of March 3d, 1875, as being a separable controversy between said John B. Driver as administrator, complainant, and said J. W. Jefferson, *not* the trustee, defendant. The petition and bond having been filed at the term at which the supplemental bill was filed. Tr. p. 85 to 90 inclusive.

We have heretofore shown in this brief that the sole complainant at the time of the commencement of this suit and also at time of filing the petition and bond by said Jefferson, *not* the trustee, for removal, were citizens of the State of Arkansas, being the executrix and administrator *de bonis non* of the estate of J H. Edrington, deceased, suing in their representative capacity, and the laws of Arkansas required such personal representatives to be citizens. The defendant J. W. Jefferson, *not* the trustee, was sole defendant in said supplemental bill, and he was both at commencement of this suit and at time of filing his petition and bond a citizen of the State of Tennessee, therefore the citizenship of the parties is correct.

The question is presented, Was this a controversy such as is contemplated by the statute?

Such a controversy is involved whenever any property or

claim capable of pecuniary estimation is the subject of litigation, and is presented for judicial determination.

Gaines v. Fuentes, 92 U. S. p. 20. Revised Statutes Ark. sec. 4911-4912. Ames v. Kansas, 111 U.S. 459-463. Boom v. Patterson, 98 U.S. 403.

Here is a claim for rents and profits, estimated by complainant to be worth $7000 per annum, and for $6000 for money received by defendant, in all estimated at $47,000. The filing of the bill shows that is the subject of litigation, and the prayer of same is the presentation for judicial determination. We find the claim is capable of pecuniary estimation, and its presentation for judicial determination.

Now let us examine the record and see whether the supplemental bill filed by John B. Driver, administrator, etc., January 16, 1885, against J. W. Jefferson, *not* the trustee, presents a separable controversy in this cause between said Driver, administrator, and said Jefferson, "which can be fully determined as between them," without the presence or intervention of the other parties to the cause.

It is apparent from the allegations in the supplemental bill, that the sole object in filing same was to recover from J. W. Jefferson, *not* the trustee, a large sum of money, $47,000 (?) charged to be due to the estate of Edrington, deceased, from the defendant J. W. Jefferson, *not* the trustee, for use and occupation of the Whitmore & Fain plantations, and for money had and received by him from the receiver in the cause, for the use and benefit of the said estate.

The administrator *de bonis non* could alone sue for this demand.

Lemon's Heirs v. Rector, 15 Ark. 436.

So far as the rents and profits of the land constituted the demand, it could only be maintained against the person in possession, and so far as the money received from receiver constituted the demand, the suit could only be maintained against the one who received it. The bill charges that J. W. Jefferson, *not* the trustee, was solely in possession of the land from date of purchase, and that he alone received the money. The liability was fixed on him alone by the allegations of the bill, and the prayer for judgment was against him and none other. And it is evident it could not be against any one else. A separable controversy exists whenever causes of action are joined, on which separate suits, each distinct in itself, might have been brought, and complete relief afforded in each suit, as to the particular controversy involved.

Barney v. Latham, 103 U. S. p. 205.

Hyde v. Ruble, 104 U. S. p. 409.

Winchester v. Loud, 108 U. S. p. 130.

Brown v. Patterson, 92 U.S. 407
Pacific R.R. Removal Cases, 115 U. S. p. 1,

The suit between Driver, administrator, and J. W. Jefferson, *not* the trustee, to recover the rents and profits of the lands and the money of the estate charged to have been received by him, which is represented by the supplemental bill, is so far a controversy distinct in itself, that Driver might have instituted his suit in any court, State or Federal, having jurisdiction of the subject matter, and where he could have served process on Jefferson. He might have delayed instituting suit until the determination of the original cause, and his right of action would have remained unimpaired.

Will it be contended for a moment that the administrator could not have brought his suit in the courts of the

State of Tennessee, where said defendant J. W. Jefferson, *not* the trustee, resided, to recover for use and occupation of this land or the money of the estate charged to have been received by him? It is possible that in no other place could a court have acquired jurisdiction to render a judgment against him.

It is charged in the supplemental bill that said J. W. Jefferson, *not* the trustee, pending the litigation, has become the owner, by purchase, of all the debts secured by the trust deed.

For the sake of argument, admit the truth of this, and does it in any manner affect his liability for the rents or the money of the estate charged to have been received by him? The controversy between the administrator and defendant J. W. Jefferson, *not* the trustee, is not as to the application of the amount he may owe, but whether he owes anything, and if so, how much on this account. The bill seems to indicate that the complainant seeks to recover this money from J. W. Jefferson, *not* the trustee, to be administered by him as a general asset of the estate of Edrington, and the beneficiaries under the trust deed to have no interest therein, as secured creditors.

It is however claimed that the suit against J. W. Jefferson, *not* the trustee, is merely ancillary to the original suit, and is, therefore, not removable under the Act of Congress.

When the supplemental proceedings is a mere graft upon the original suit and could not be maintained without it, then it is not a *suit* within the meaning of the Act of Con-

gress, or if it is a mere mode of executing the original suit, it cannot be removed.

Bank v. Trumbull & Co., 16 Wallace p. 190.

Barrow v. Hunter, 99 U. S. p. 80.

Flash v. Dillon, 22 Fed. Rep. p. 1.

Where, however, it involves an independent controversy with new and different parties, *as in the case at bar*, the supplemental suit is removable.

Buford v. Strother, 10 Fed. Rep. p. 406.

In this case the learned Judge (Love) says: "It is idle to say that a supplemental proceeding cannot be removed because it is an appendage or sequence of the original suit."

The case of Gaines v. Fuentes, 92 U. S. p. 10, was the sequence of the original suit probating the will of Daniel Clark, and was to set aside the will as a monument of title for false and insufficient testimony in establishing it, yet it was a removable cause under the statutes.

The ancillary proceedings which have been passed upon by the courts wherein the jurisdiction has been denied, have been garnishment proceedings to execute judgments of the courts, or suits to try the rights of property seized by the officer on execution. These have been defined to be grafts on the original proceedings, drawing all their life from the trunk suit, and if the original judgment is satisfied the graft dies. Just as a graft on a tree grows while the sap flows from the roots, but as soon as the trunk or body of the tree dies, the fountain which sustained the graft ceases and it expires. Where, however, a seed falls from the tree, sprouts and sends up a new and independent shoot, the tree may die, yet it, though a sequence of the

tree, continues to grow, unaffected by its relation to the parent trunk.

If the supplemental cause is a suit which could be prosecuted to judgment after the trust debt had been discharged, then it is an independent controversy, with new and different parties, and is removable, the parties being citizens of different States.

Bank v. Turnbull & Co, 16 Wal. p. 190.
Flash v. Dillon, 22 Fed. Rep. p. 1.
Buford v. Strother. 10 Fed. Rep. p. 406.

If J. W. Jefferson, *not* the trustee, was liable under the allegation of the supplemental bill, the discharge of the trust debt would not have ended his liability, and therefore the suit against him was an independent one, and removable under the statute.

The suit was for the value of the rents of the plantations for five years. It was also for money belonging to the estate illegally received by him.

If the plantations were wrongfully occupied by him, his duty to account to the administrator for the rents would exist even if *every* debt against the estate were discharged.

If he received money belonging to the estate, an equal duty rested on him.

The administrator could enforce this right regardless of the pecuniary condition of the estate.

In the motion to remand this cause to the State court it was made a ground that no controversy existed in that court, as defendant J. W. Jefferson, *not* the trustee, filed his petition for removal before *filing an answer* to supplemental bill.

It was assumed that a controversy could not exist until an issue was formed. The petition was sworn to, and it states that a controversy does exist between the complainant and himself as to the matters stated in said supplemental bill. Where nothing appears to the contrary it will be presumed from the fact that a suit has been brought, that there is a controversy between the parties.

Bailey v. American Cent. Ins. Co., 8 Fed. Rep. p. 686.

In the case of Stanbrough v Griffin, 52 Iowa 112, a different opinion was held, but in Bailey v. Insurance Co. above, Judge McCreery says that "the point was not necessary to be decided, and the remarks of the judge concerning it are *dicta*;" that he was unable to concur in the view expressed by Rothrock, J., on this question.

In Winchester v. Loud, 108 U. S. p. 130, the petition for removal was filed before answer, yet the Chief Justice considered that fact so unimportant as to only mention it, because he had, in consequence thereof, to look to the bill to determine what the controversy was.

It was claimed by adversary counsel in the circuit court that Nancy A. Edrington was a party complainant in this cause in her *individual* capacity, but such is not the fact. She never was a party complainant except as executrix of the estate of J. H Edrington, deceased. See

Original Complaint, Tr. 1.
Amended Complaint No. 1, Tr. 6.
Amended Complaint No 2, Tr 7.
Amended Complaint No. 3, Tr. 33.

But after said Nancy A. had resigned as such executrix, and after John B. Driver had qualified as administrator *de*

bonis non with the will annexed of J. H. Edrington, deceased, and as such, by order of court, had been substituted as complainant in lieu of the said Nancy A. resigned, and the cause ordered to progress in his name, to-wit: January 17, 1885, the day on which the petition for removal was filed, the said Nancy A. individually filed a paper in the cause, Tr. p. 79, which she denominated as "4th Amended and Supplemental Complaint," and which defendant by counsel filed a motion to strike out as such. Tr. p. 91.

It must be manifest from the record that this paper can have no standing as an amended and supplemental bill, because the said Nancy A. has no original bill to amend or supplement. She never had been a complainant before, and the said paper could not make her so, and it will be stricken out, as an amended bill. The most she can claim would be that it be allowed to stand as a supplemental answer to the cross-bill.

Counsel seem to have thought it necessary in some manner to make her a complainant in order to prevent a removal to the United States Court, and when there was not even a pretence for it, styled their papers "Nancy A. Edrington, complainant, v. John W. Jefferson, trustee, J. W. Jefferson, not the trustee, J. J. McComb, as individual, and others, defendants." See Supplemental Bill of John B. Driver, administrator, etc. Tr. p. 75.

Hence we submit that upon the whole, the decree of the circuit court remanding the cause to the State court should be reversed.

J. J. HORNER & J. C. TAPPAN,
D. E. MYERS & W. M. SNEED,
For Appellants.

117-172

Supreme Court U. S.
FILED
MAR 1 1886
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1885.

APPEAL FROM EASTERN DISTRICT OF ARKANSAS.

J. W. JEFFERSON ET ALS., APPELLANTS,

vs. } No 1083.

JOHN B. DRIVER, *Admr. de bonis non of the Estate of James H. Edrington, deceased*, and

NANCY A. EDRINGTON, APPELLEES.

BRIEF FOR APPELLEES.

E. F. ADAMS, *Attorney.*

S. C. TOOF & CO. PRS. & LITHS., MEMPHIS

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

J. W. JEFFERSON ET ALS., APPELLANTS,

vs. } No. 1083.

JOHN B. DRIVER, *Administrator de bonis non of the Estate of James H. Edrington, deceased*, and

NANCY A. EDRINGTON, APPELLEES.

BRIEF FOR APPELLEES.

On the motion of appellees in the above entitled cause, the Circuit Court of the United States for the Eastern District of Arkansas, Judges David J. Brewer and H. C. Caldwell sitting, remanded the cause to the State court of Mississippi County, Arkansas, for trial; and perhaps for expediency, it will be best to refer to the facts in their chronological order, which we deem necessary, as disclosed by the record, disregarding the merits of the controversy.

On the 16th day of March, 1874, J. H. Edrington and his wife, Nancy A. Edrington, one of the appellees in this cause, executed a deed of trust to J. W. Jefferson on the lands involved in this controversy, and known as the "Fain" & "Whitmore" plantations, in Mississippi county, Arkansas, to secure the sum of $28,754.21, due numerous creditors, among whom is The Washington Fire and Marine Insurance Company, the largest of said creditors, and

of which J. W. Jefferson, the appellant herein, was president; The Planters Insurance Company, J. C. Ward & Co., F. Banksmith & Co., Orgill Bros. & Co. and H. Wetter & Co., all citizens of Tennessee, and J. J. McComb, who is a citizen of Louisiana.

Supplemental Transcript, pp. 22–23–30–31–32 & 82.

Nancy A. Edrington only joined in the deed for the purpose of relinquishing dower.

Original Transcript, p. 13.

On the 12th day of August, 1874, J. H. Edrington died, and shortly thereafter Mrs. N. A. Edrington qualified as executrix of the last will of her husband.

John W. Jefferson, the trustee, advertised Fain and Whitmore plantations for sale, and on the 11th day of December, 1874, Nancy A. Edrington, as executrix, filed her bill in the circuit court of Mississippi county, Arkansas, against J. W. Jefferson as trustee, J. H. Hazard and the McCauley heirs, et als., alleging, among other things, that said "Whitmore" plantation was incumbered by a mortgage in favor of J. H. Hazard for the sum of $8000; that said "Fain" plantation was incumbered by a lien in favor of the McCauley heirs, then held by one John Matthews for $12,000, &c., and praying that said J. W. Jefferson, trustee, be enjoined from selling said lands. Which was by the court granted.

Supplemental Transcript, pp. 2 & 4.

J. H. Edrington only held Bond for Title to the "Fain" plantation, the legal title being in the McCauley heirs,

hence they were made defendants in the original bill and to the cross-bill.

Supplemental Transcript, p. 64.

It is true, that J. T. Jefferson, a resident citizen of the State of Tennessee, was a defendant in the original complaint filed by N. A. Edrington as executrix, and that he was a partner of J. H. Edrington in Memphis, Tennessee, doing business under the firm name and style of Jefferson & Edrington.

On the 22d day of December, 1874, Nancy A. Edrington as executrix, filed an amendment to her complaint, setting up transactions between Jefferson and Edrington as partners, which we contend has, now, nothing to do with this controversy.

Supplemental Transcript, p. 6.

On the 14th day of January, 1875, Nancy A. Edrington as executrix, filed a second amendment to her bill setting up additional information as to said partnership.

Supplemental Transcript, pp. 7 & 8.

On the 1st day of March, 1875, John W. Jefferson, the trustee, filed his answer to the original and amended complaint of Nancy A. Edrington as executrix, and, among other things, denied that there was any incumbrance on Fain and Whitmore plantations in favor of any one, thereby putting that matter in issue.

Supplemental Transcript, pp. 9 & 11.

The Washington Fire and Marine Insurance Company, of which J. W. Jefferson, the appellant herein, was presi-

dent, and the other beneficiaries in said deed of trust were made parties defendant to the original complaint of Nancy A. Edrington as executrix, and asked leave of the court to file cross-bills (complaints).

Supplemental Transcript, p. 21.

On the 28th day of February, 1876, the Washington Fire and Marine Insurance Company and the other beneficiaries in said deed of trust, filed their answer and cross-bill, which was sworn to by J. W. Jefferson, the appellant herein, as president of said insurance company.

Supplemental Transcript, pp. 22 to 45.

Among other things, said defendants deny that the "Whitmore" plantation is incumbered for $8000 in favor of said Hazard; and deny that the "Fain" plantation is incumbered for $12,000 in favor of John Matthews as assignee of the McCauley heirs; and allege, that Nancy A. Edrington paid off said incumbrances for her benefit; and in the prayer to said answer, which they ask to be made a cross-bill, they make Nancy A. Edrington, as executrix, *and individually*, and John Matthews defendants to said cross-bill.

Supplemental Transcript, pp. 25–38–39 & 44.

On the 9th day of May, 1876, John Matthews filed his answer to said cross-bill filed by the creditors in said deed of trust, alleging that he did buy the "McCauley notes," and had assigned them to Nancy A. Edrington individually; and that said Nancy A. Edrington had purchased the "Hazard mortgage" with her own means.

Supplemental Transcript, pp. 46 & 47.

On the 10th day of May, 1876, Nancy A. Edrington filed her answer to the cross-complaint filed by the creditors in said deed of trust, in which she, *as individual*, as executrix, etc., adopted the answer of the said John Matthews, and alleges that she purchased the "McCauley notes" and the "Hazard mortgage" with her own means, and prays that the plantations be sold, and the purchase money applied to the satisfaction of the preferred liens, and then to the satisfaction of the trust deed.

Supplemental Transcript, pp. 50 & 51.

At the May term, 1876, of the State circuit court, it made and passed an order appointing James D. Driver receiver for said Fain and Whitmore plantations.

Original Transcript, p. 176.

At the November term, 1876, the State circuit court in and for Mississippi county, Arkansas, made and passed an order directing that the cause should proceed against Nancy A. Edrington *individually* and as executrix of the estate of James H. Edrington deceased, and other defendants.

Supplemental Transcript, pp. 55 & 56.

On the 6th day of November, 1876, S. B. McCauley answered for the McCauley heirs, admitting the lien in their favor on the "Fain Place" for $12,000 and the payment thereof to them by John Matthews.

Supplemental Transcript, p. 51.

On the 16th day of November, 1876, at the same term of the State court at which the last order referred to was

made, the trustee, J. W. Jefferson, the Washington Fire and Marine Insurance Company, of which J. W. Jefferson, the party now before the court, was president, and the other creditors in said trust deed, filed their bond and petition to remove this cause to the Circuit Court of the United States for the Eastern District of Arkansas; in which they allege that it is a controversy wholly between petitioners and Nancy A. Edrington *individually* and as executrix, John Matthews and the heirs at law of James H. Edrington, deceased, and upon which this cause was removed to said United States Circuit Court.

Supplemental Transcript, p. 57.

In said United States Circuit Court, on the 14th day of March, 1877, the creditors in said trust deed filed an additional answer, again denying that Nancy A. Edrington had purchased said "McCauley notes" and "Hazard mortgage" with her own means, and claiming that the purchase was made with the assets of the estate of the said James H. Edrington, deceased.

Supplemental Transcript, pp. 64 & 65.

In said United States Circuit Court, on the 13th day of March, 1877, and on the 10th day of October, 1877, Nancy A. Edrington filed her motion to remand to the State court, which was by that court overruled.

Original Transcript, pp. 410–411 and 412.

On the 4th day of October, 1879, the Hon. H. C. Caldwell, sitting as circuit judge, rendered a final decree in this cause, ordering said Fain and Whitmore plantations

sold for the benefit of the creditors in said trust deed exclusively, and ordering J. D. Driver, receiver, to pass his final account to the Master of that court; thereby disallowing Nancy A. Edrington's claim to be reimbursed out of the proceeds of said sale for the "McCauley notes," and the "Hazard mortgage," from which Mrs. N. A. Edrington *individually and as executrix*, appealed to this court.

Supplemental Transcript, pp. 69–70 and 71.

Nancy A. Edrington being financially unable to give supersedeas bond on her appeal to this court, R. W. Nicholls, the Master, appointed in and by said final decree, on the 13th day of January, 1880, sold said Fain and Whitmore plantations to J. W. Jefferson, the party now before the court, and J. J. McComb. And on the 8th day of March, 1880, filed his final report of said sale, in which it appears that the said J. W. Jefferson, "*not the trustee*," and J. J. McComb *were the beneficiaries under said decree, and entitled to the proceeds of said sale*, and that the receiver under said decree had paid over to him the sum of $6000.60.

Supplemental Transcript, pp. 72–73 and 74.

On the 26th day of April J. J. McComb, one of the purchasers at said sale, sold his entire interest to J. W. Jefferson, "not the trustee."

Supplemental Transcript, p. 101.

At its October term, 1883, to-wit, on the 5th day of May, 1884, this Honorable Court reversed the decree rendered in this cause by the Hon. H. C. Caldwell, because said circuit court had no jurisdiction thereof, and remand-

ed said cause to the said United States Circuit Court, with instructions to remand it to the State court of Mississippi county, Arkansas, and in the opinion of the court, delivered by Mr. Chief Justice Waite, it appears that said cause was reversed in favor of Nancy A. Edrington *individually and* as executrix.

Edrington v. Jefferson, 111 U. S. 770.

In the mandate of this Honorable Court directed to said circuit court, it is recited that the controversy involved herein is between Nancy A. Edrington *individually* and as executrix of James H. Edrington, deceased, and the creditors in said trust deed, and therein is pronounced a judgment in favor of Nancy A. Edrington *individually* and as executrix for costs accrued to her on said appeal.

Supplemental Transcript, pp. 104–105 and 107.

On the 6th day of January, 1880, while this cause was pending in the said circuit court of the United States, John B. Driver was appointed Administrator *de bonis non* of the estate of James H. Edrington, deceased, and on the 19th day of March, 1880, he filed his petition praying to be made a party herein, but said circuit court refused to allow said Driver to be made a party as adminstrator, &c., and dismissed his petition.

Original Transcript, pp. 423–425 and 431.

In pursuance of the mandate of this Honorable Court, said circuit court remanded this cause to the said State court, and on the 17th day of January 1885, John B. Driver as administrator, &c., of James H. Edrington, was

made a party plaintiff in said State court, and this cause was ordered to proceed in the name of Driver *as one of the plaintiffs*. And it is fair to presume Mrs. N. A. Edrington was the other plaintiff.

Supplemental Transcript, p. 91.

On the 16th day of January, 1885, after this cause had been re-docketed in said State court, John B. Driver as administrator, &c., filed his supplemental complaint and answer to the cross-complaint of the creditors in said trust deed, setting up the matters which had transpired in said cause whilst it was pending in said United States Courts; and praying that J. W. Jefferson, the party now before the court, and for whose benefit the sale under the decree rendered by the Hon. H. C. Caldwell was made, be *cited* to appear and make settlement for rents which had accrued whilst he was in possession of said plantations, pending the appeal to this court; and that he be required to refund the $6,000 which had been withdrawn from the hands of J. D. Driver, receiver in the State court, and paid out for his benefit.

Supplemental Transcript, pp. 75 to 78.

On the 17th day of January, 1885, Nancy A. Edrington *individually* filed her supplemental complaint and answer to cross-complaint of said creditors, setting up her resignation as executrix of James H. Edrington; the payment by her with her own money of the "Hazard mortgage" and the "McCauley notes," that in equity she ought to be subrogated to the rights of the original holders thereof; and

praying to have them decreed prior liens in her favor against the lands embraced in said trust deed.

Supplemental Transcript, pp. 79–80 and 81.

On the same day, January 17th, 1885, J. W. Jefferson, "not the trustee," *entered his appearance* and filed his bond and petition to remove this cause a second time to the United States Circuit Court for the Eastern District of Arkansas, under Sec. 639, subdivision three of the Revised Statutes of the United States, and the act of Congress of March 3d, 1875.

Supplemental Transcript, pp. 85–86–87 and 91.

On the same day, January 17th, 1885, Joshua T. Jefferson, a citizen of the State of Tennessee, filed a like petition and bond in said cause to remove it a second time to said United States Court, and thereupon the plaintiffs did dismiss their suit against him, but not to defeat the jurisdiction of the United States Courts, as adversary counsel have gratuitously supposed, but because J. T. Jefferson had been pursued to insolvency and further litigation with him was useless, and thereupon, J. T. Jefferson withdrew his bond and petition to remove to the said circuit court.

Supplemental Transcript, pp. 82–83–91 and 92.

The State court within and for Mississippi county, Arkansas, refused to order the removal of this cause to the Circuit Court of the United States, because it was not a controversy wholly between citizens of different States; that the rights of J. W. Jefferson, if any he had, grew out of the original suit and was incidental thereto; and in

no sense was it an original suit within the meaning of the statutes of the United States providing for the removal of causes. J. W. Jefferson excepted to the entry of said order, and thereupon procured a copy of the record herein and filed it a second time in the said United States Circuit Court.

Supplemental Transcript, p. 93.

On the 30th day of March, 1885, Nancy A. Edrington, and John B. Driver, administrator *de bonis non* of the estate of James H. Edrington, deceased, plaintiffs in this cause, appeared in said United States Circuit Court and filed their motion to remand to the State court, from which it was removed.

Supplemental Transcript, pp. 94 & 95.

On the same day, 30th of March, 1885, J. W. Jefferson filed his answer in said court, denying all liability.

Supplemental Transcript, pp. 95 & 97.

On the 22d day of April, 1885, the Circuit Court of the United States for the Eastern District of Arkansas, remanded this cause to the State court; the defendant excepted, and J. W. Jefferson prayed an appeal to this court.

It is agreed that counsel may refer to the original transcript of Edrington v. Jefferson, now on file in this court, as if printed with the supplemental transcript now before the court.

Supplemental Transcript, p. 109.

On this state of facts, we contend:

1st.

That the only real controversy in this cause is between Nancy A. Edrington, individually, and the preferred creditors in the trust deed of the 19th day of March, 1874, as to the application of the purchase money arising from the proceeds of sale of the land embraced therein.

2d.

That the effect of the decision of this court in reversing this cause, was to leave the parties, plaintiffs and defendants, in the same attitude as if it had never been removed from the State court, and all subsequent parties were bound by the pleadings therein.

3d.

That at all times, constructively at least, the lands involved herein have been in the hands of J. D. Driver, receiver, in the State court, and in no event could there be a judgment rendered against J. W. Jefferson requiring him to pay over the rents to J. B. Driver, administrator, etc. The duty of Driver was simply to cite J. W. Jefferson to appear before the court to settle for whatever rents might be in his hands, and when the balance was ascertained, direct it to be paid over to the receiver to be disposed of at the final hearing of the cause.

4th.

That J. W. Jefferson cannot remove this cause from the State court under the Act of Congress of March 3d, 1875, because the application was not made at or before the

term at which the same could have been first tried therein, and if any right he has, it is subservient to and bound by the action or non-action of the original parties.

5th.

That this is not a controversy wholly between citizens of different States, as Nancy A. Edrington, one of the plaintiffs, is a citizen of the State of Tennessee, and J. W. Jefferson, "not the trustee," the Planters Insurance Company, and others of the defendants, are citizens of the same State. That S. B. McCauley, Georgia B. McCauley and Penelope Fizer, defendants in the cross-bill, are citizens of Tennessee, and a majority of the plaintiffs in said cross-bill are citizens of the same State.

6th.

That J. W. Jefferson, "not the trustee," cannot remove this cause from the State court to the United States Circuit Court upon his petition alone, under the act of Congress of March 2, 1867, or any part of it, because he is one of several defendants who are citizens of the State of Tennessee, and Mrs. Nancy A. Edrington, one of the plaintiffs, is a citizen of the same State.

7th.

That J. W. Jefferson cannot remove this cause from the State court, because his liability, if any, is incidental and ancillary: growing out of, and a part of the original suit, between plaintiffs and defendants. His position is not unlike that of a garnishee, since he must admit his liability to the plaintiffs or to the defendant creditors in said trust deed.

8th.

That J. T. Jefferson voluntarily withdrew his petition and bond to remove this cause from the State court to the United States Circuit Court; he is no longer before the court, and he did not appeal from the order remanding this cause to said State court.

9th.

That if it be held by this court that J. T. Jefferson had no right to withdraw his own application to remove this cause, he is also a citizen of the State of Tennessee, and the plaintiff Mrs. Nancy A. Edrington is a citizen of the same State; and all of the objections against J. W. Jefferson's right to remove on account of citizenship apply to J. T. Jefferson; that his application to remove was not made in apt time, under the act of March 3, 1875.

ARGUMENT.

Adversary counsel in their brief, take great comfort to themselves in styling the suit at bar, J. W. Jefferson et als. v. John B. Driver, administrator *de bonis non* of the estate of James H. Edrington. Thus, on paper at least, ignoring Nancy A. Edrington as a party in interest at all. It appears from the record in this cause that J. W. Jefferson "not the trustee" is the sole and only appellant, and Nancy A. Edrington and John B. Driver, adm'r, &c., are the only appellees. J. W. Jefferson "not the trustee" is the only one of the defendants who sought to remove the case from the State court, and Nancy A. Edrington and John B. Driver as administrator *de bonis non* of the estate of James H. Edrington, deceased, filed their motion to remand, which was by the lower court sustained, and J. W. Jefferson "not the trustee" appealed to this court. It is admitted in the answer of J. W. Jefferson "not the trustee," that pending the litigation he has acquired all of the interest of the preferred creditors in the deed of trust made for their security on the Fain and Whitmore plantations.

Supplemental Transcript, p. 96.

It is shown by the record that J. W. Jefferson, "not the trustee," and J. J. McComb, whom Jefferson holds under, were the beneficiaries in and under the decree pronounced by the Hon. H. C. Caldwell, which was reversed by this court in Edrington v. Jefferson, 111 U. S. 770.

Supplemental Transcript, p. 73.

It is admitted that Nancy A. Edrington, the original plaintiff, or the defendant to the cross-bill filed by said preferred creditors, whose rights said J. W. Jefferson had acquired before said sale under said decree, is now, and was at the date of the filing of the petition, bond and affidavit of J. W. Jefferson, "not the trustee," a citizen of the State of Tennessee, and that W. B. Edrington, one of the heirs-at-law of J. H. Edrington, deceased, and a defendant in said cross bill, is a citizen of the State of Arkansas.

Supplemental Transcript, pp. 109 & 110.

J. W. Jefferson, "not the trustee," on the 24th day of February, 1876, swears that Nancy A. Edrington is a non-resident of the State of Arkansas; that John Matthews, Emily Hazard, John Hazard and Charles H. Gaylord, defendants in said cross-bill, are citizens of Arkansas; and that S. B. McCauley, Georgia McCauley and Penelope Fizer, defendants in said cross-bill, are citizens of the State of Tennessee; that of the plaintiffs in said cross-bill, the Washington Fire and Marine Insurance Company, the Planters Insurance Company, J. C. Ward & Co., F. Banksmith & Co., and H. Wetter & Co., are citizens of the State of Tennessee.

Supplemental Transcript, p. 56.

Brooks, Neely & Co., the holders of the "McCauley notes," were made parties to the suit, and they are citizens of the State of Tennessee.

Original Transcript, p. 301.

And Brooks, Neely & Co. and the McCauley heirs are indispensable parties to this controversy, as are also the heirs-at-law of James H. Edrington, one of whom is a citizen of Arkansas and five others citizens of the State of Tennessee.

Jones on Mortgages, § *1414*.

So it appears that in the original bill one of the plaintiffs, Nancy A. Edrington, is a citizen of the State of Tennessee; that a majority of the defendants reside in Tennessee; that in the cross-bill a majority of the plaintiffs are citizens of the State of Tennessee; that the real defendant, Mrs. Edrington, is a citizen of the same State, as well as the McCauley heirs.

The plaintiffs in the cross-bill have not different causes of action against different parties, as was the case in

Barney v. Latham, *103 U. S. 205*.

The only real controversy in this cause is between Nancy A. Edrington on one side and the preferred and general creditors on the other. The preferred creditors denying that Mrs. Edrington has a right to enforce payment of the "McCauley notes" and the Hazard mortgage." The administrator admits, that as to him, the preferred creditors have the right to sell, but insists that the rents and profits of the lands involved are general assets of the estate, and should go to all creditors, secured and unsecured, *pro rata*, who have established their claims against the estate. The preferred creditors will insist that the rents and profits of the land must go to extinguish the

claims, secured or partially secured, as the case may be, by the deed of trust. Mrs. Edrington's interest is antagonistic to both the general creditors, whose claims as shown by the record amount to about $48,000, exclusive of interest and the preferred creditors. We repeat, there is no controversy between the administrator and the preferred creditors as to the sale of the land, and the only controversy as to rents is in the application of payments to be made therewith.

In both aspects Mrs. Edrington, a citizen of the State of Tennessee, is a necessary and indispensable party.

The administrator prays that the lands be sold.

Supplemental Transcript, p. 5.

The plaintiffs in the cross-bill pray that the lands be sold.

Supplemental Transcript, p. 45.

There is no conflict between the administrator and the said creditors as to the real cause of action herein involved, *i. e.* the sale of said lands.

For the purpose of determining the right of removal, this court will arrange the parties, regardless of the position they occupy on the record, whether plaintiffs or defendants, on opposite sides of the real controversy, as it may appear.

Removal Cases, 100 U. S. 468.

Pacific Railroad v. Ketchum, 101 U. S. 289–298.

Let this arrangement be made in the case at bar, and we see in the original bill the real controversy is between

Nancy A. Edrington on one side and John B. Driver, administrator, and the preferred creditors on the other, and in the cross-bill it would be J. W. Jefferson, the preferred creditors and John B. Driver, administrator, &c., against Nancy A. Edrington. There is but one indivisible cause of action involved herein, and it involves the priority of liens on certain lands. The rents and profits are incident to, and grew out of the main cause of action.

At the inception of this suit had the plaintiffs in the cross-bill acceded to the claims of Nancy A. Edrington, as to the "McCauley notes" and the "Hazard mortgage," there would have been no rents and profits about which to litigate, and a consent decree would have been entered at once.

It is true that J. W. Jefferson, "not the trustee," filed a separate answer in this cause which raises new issues incidental to the main cause of action, but this does not give him the right to remove, even if he had the question of citizenship in his favor.

Ayers v. Wiswall, 112 U. S. 193.
Hyde v. Ruble, 104 U. S. 407.
Winchester v. Loud, 108 U. S. 130.
Shainwald v. Lewis, 108 U. S. 158.
Louisville R. R. Co., v. Ide, 114 U. S. 55.
St. Louis & S. F. R. R. Co. v. Wilson, 114 U. S. 60.

To entitle one to the right of removal under the latter clause of the second section of the act of March 3d, 1875, it must be a case capable of separation into parts, so that in one of the parts a controversy will be presented with citizens of one or more States on one side, and citi-

zens of another, or other States on the other, which can be fully determined without the presence of the other parties to the suit, as it has been begun.

Frazer v. Jennison, 106 U. S. 191–194.
Barney v. Latham, 103 U. S. 205.

And we submit that the tacking of the supposed interest of other parties not before the court in their own behalf, or the suppression of the name of a material party to the record, will not make such a case, or bring about a removal, no matter how much it may be desired by the party applying.

Whatever right J. W. Jefferson acquired in the suit at bar was *pendente lite*, through the original parties, and he is bound by their action or non-action as the case may be. His only defense, as disclosed by his answer, *Supplemental Transcript, p. 95*, against the rents claimed by the administrator, is for alleged improvements placed on the land pending the appeal in this cause to the Supreme Court of the United States in *Edrington v. Jefferson*, and whatever would bar a removal of this suit *seven years ago*, when he went into possession of the lands involved herein, will bar him now.

Cable v. Ellis, 110 U. S. 398.
Houston R. R. v. Shirley, 111 U. S. 358.

Their pleadings were his pleadings, and the removal must have been made, if at all, under the act of Congress of March 3d, 1875, at or before the term at which the cause could have been first tried. It has been so held repeatedly by this court, and because the removal was not

asked for in time, this court remanded this cause to the State court.

Edrington v. Jefferson, 111 U. S. 770.
Babbitt v. Clark, 103 U. S. 612.

Brooks, Neely & Co., citizens of Tennessee, as holders of the "McCauley notes," are necessary parties to the controversy, as well as the heirs-at-law of James H. Edrington, who, except one, are citizens of Tennessee, and in order to foreclose the lien or to deny the relief prayed for by Brooks, Neely & Co., they must be before the court. The McCauley heirs, who originally held the lien, and still hold the legal title to the "Fain Place," are citizens of the State of Tennessee, and defendants in the cross-bill, and they are necessary parties to the suit, as was held by this court in the case of

Ayres v. Wiswall, 112 U. S. 187.

To authorize a removal under the latter clause of the act of March 3, 1875, as is sought in this case, the controversy must be wholly between citizens of different States, and the removal must be applied for at or before the term at which said cause could be first tried.

Frazer v. Jennisson, 106 U. S. 191.
Babbitt v. Clark, 103 U. S. 612.
Louisville R. R. Co. v. Ide, 114 U. S. 55.
St. Louis R. R. Co. v. Wilson, 114 U. S. 60.
Crump v. Thurber, 115 U. S. 56.
Pirie v. Toedt, 115 U. S. 41.
New Jersey Central R. R. v. Mills, 113 U. S. 249.
American Bible Society v. Price, 110 U. S. 61.
Gregory v. Hartley, 113 U. S. 742.

The requisite citizenship of parties must exist at the commencement of the suit, *and at the date of filing the petition*, to authorize a removal.

Gibson v. Bruce, 108 U. S. 561.

Houston R. R. Co. v. Shirley, 111 U. S. 358.

The suit at bar might have been tried ten years ago in the State court but for the wrongful removal therefrom by the preferred creditors in said trust deed.

Brooks, Neely & Co., Nancy A. Edrington, the heirs at law of J. H. Edrington, except one, Sam. B. McCauley, Georgia McCauley and Penelope Fizer, all being citizens of the State of Tennessee, with J. W. Jefferson, "not the trustee," and the party seeking the removal, the citizenship of the parties will not authorize the removal of the suit at bar under the "local prejudice act" of March 2d, 1867.

Sewing Machine Co. Cases, 18 Wal. 553.

Vannevar v. Bryant, 21 Wal. 43.

Bible Society v. Grove, 101 U. S. 610.

Myers v. Swan, 107 U. S. 546.

At best, J. W. Jefferson, "not the trustee," is one of several defendants, and we understand under the act of Congress of March 2d, 1867, *all* of the defendants must apply for the removal, even if the citizenship of the parties is favorable thereto.

Ward v. Arredondo, 1st Paine C. C. R. 410.

Hubbard v. North, 3d Blatch. C. C. 84.

Cook v. State Nat. Bank, 52 N. Y. 96.

Bixby v. Couse, 8 Blatch. C. C. 73.

But we submit, if all else was favorable to a removal of this cause, J. W. Jefferson, "not the trustee," has no such interest as would authorize him to do so. The claim made against him for rents is merely auxiliary to the main suit. It is incidental to, and grew out of the original suit, and is in no sense the beginning of a suit, for it must have the original suit to support it.

4th Dillon Circuit Court R. 557.
Bank v. Turnbull & Co., 16 Wall. 190.
West v. Aurora City, 6 Wall. 139.
Gwinn v. Breedlove, 2 Howard 29.
Freeman v. Howe, 24 Howard 450.

In the case of *Bank v. Turnbull & Co.*, Mr. Justice Swayne delivering the opinion of the court, said: * * * "The contest could not have arisen but for the judgment and execution, and the satisfaction of the former would at once have extinguished the controversy between the parties."

So with the case at bar, but for the original suit the claim for rent would never have arisen.

In the case of *West v. Aurora City*, Mr. Chief Justice Chase delivering the opinion of the court, said: * * * "A suit "removable from a State court must be a suit regularly "commenced by a citizen of the State in which the suit is "brought, *by process served* upon a defendant who is a citi- "zen of another State, and who, if he does not elect to "remove, *is bound to submit to the jurisdiction of the State "court.*"

In the case at bar, J. W. Jefferson, "not the trustee," voluntarily, of his own motion, entered his appearance and now seeks to remove the case on incidental matters which grew out of the original suit. With all due respect to the court, we say it is a most palpable effort on the part of the "tail trying to wag the dog."

The court will bear in mind that James H. Edrington, in his lifetime, never acquired title to the "Fain Plantation." He went into possession of the place under a title bond from Penelope Fizer, S. B. McCauley and Penelope Fizer, as guardian for Georgia B. McCauley, in whom the legal title to said plantation is now.

Original Transcript, p. 23.

The McCauley heirs, as above, are all citizens of the State of Tennessee, and are all defendants in the original suit, for the purpose of divesting the legal title to said lands out of them.

Brooks, Neely & Co., the holders of the notes provided for in said title bond, are citizens of the State of Tennessee, and J. W. Jefferson, "not the trustee," and J. T. Jefferson, are citizens of the same State.

It might be sufficient to say, in answer to the position assumed by adversary counsel, as to the right of J. T. Jefferson to remove this cause from the State court: That J. T. Jefferson is not here before the court in person or by counsel. He withdrew his application to remove the cause, and it was dismissed as to him. He did not appeal from the order remanding this cause to the State court.

But if it is seriously argued by the counsel for J. W. Jefferson, "not the trustee," that he can carry on the contest in this court under the cloak of J. T. Jefferson, we can but repeat our argument as to the citizenship of the parties. J. T. Jefferson being a defendant in the original bill and a citizen of the State of Tennessee, and Nancy A. Edrington, one of the plaintiffs in the original bill and a defendant in the cross-bill, and Penelope Fizer, S. B. McCauley and Georgia B. McCauley being defendants therein and citizens of the same State, the citizenship of the parties will not authorize a removal of this cause from the State court, under the act of March 3d, 1875, nor under the act of March 2d, 1867, governing the removal of causes from the State to the Federal Courts.

There is but one cause of action here, and a defendant has no right to say that an action shall be several which a plaintiff elects to make joint. A separate defense may defeat a joint recovery, but it cannot deprive a plaintiff of his right to prosecute his own suit to final determination in his own way.

Louisville Railroad Co. v. Ide, 114 U. S. 56.
St. Louis Railroad v. Wilson, 114 U. S. 62.
Smith v. Rines, 2d Sumner 348.

We presume it will not be seriously argued that J. T. Jefferson, if he was seeking to do so, could, at this late day, remove this cause from the State court under any of the provisions of the act of Congress of March 3d, 1875. He is too late by ten years, or more.

Edrington v. Jefferson, 111 U. S. 770.
Myers v. Swann, 107 U. S. 547.
Babbitt v. Clarke, 103 U. S. 612.

We admit that if J. T. Jefferson had the right to remove this cause from the State court, and was seeking to do so, the plaintiffs could not deprive him of that right by dismissing the cause against him in the State court after his petition and bond sufficient in form had been filed, but to say he can not withdraw his petition seems to us to be an absurdity. There is now no suit against him. Adversary counsel have not referred to a single authority which holds that a party cannot withdraw his petition and discontinue litigation, and we presume there are no such authorities holding such a new and novel proposition. All of the authorities cited by adversary counsel on that point, refer to cases where some attempt has been made by the adverse party to defeat the jurisdiction of the United States courts, over and against the objection of the party seeking to remove the cause from the State court.

The State court after a careful consideration of the petition filed therein to remove this cause to the United States Circuit Court, refused to order the removal, and J. T. Jefferson went into that court and withdrew his petition to remove. Unquestionably under the law as laid down by this court and most of the State courts, it is the duty of the State court on the filing of a petition to remove a cause into the Federal court, to judicially determine the right of the petitioner to remove the case.

Stone v. Sargent, Jan. No. 1881, Am. Law Reg. 24.

Amory v. Amory, 95 U. S. 186.

McWhinney v. Brinker, 64 Ind. 360.

Mr. Chief Justice Gray, delivering the opinion of the Supreme Court of Massachusetts in *Stone v. Sargent*, said: * * * "It is the duty of the State court, before relin-"quishing jurisdiction of a cause once lawfully brought "before it, and discharging that cause from its own "docket, to be satisfied that there has been a compliance "with those conditions."

And State courts have generally held that—*An Appeal lies to the appellate court of the State* from an order for the removal of a cause to a Federal court, or from an order refusing such removal.

State v. The Judge, 23 La. Ann. 29.
Bryant v. Rich, 106 Mass. 180.
Crane v. Reder, 28 Mich. 527.
Whitton v. Chicago R. R., 25 Wis. 424.
Darst v. Bates, 51 Ill. 439.

This being true, and J. W. Jefferson "not the trustee" contesting the order of refusal made by the State court, and reserving exceptions thereto, perhaps his only remedy is by appeal to the Supreme Court of Arkansas, with the right reserved to appeal from that court to this court.

However that may be, and it is immaterial to us, we respectfully submit that the order of the circuit court remanding this cause ought to be affirmed.

E. F. ADAMS, for
N. A. EDRINGTON and
J. B. DRIVER, Adm'r, &c.